रजिस्ट्री सं. डी.एल.—33001/99

REGISTERED NO. D. L.—33001/99

भारत का राजपत्र
The Gazette of India

असाधारण भाग में प्रकाशित
PUBLISHED BY AUTHORITY

सं. 25] नई दिल्ली, शनिवार, जून 19, 1999/ज्येष्ठ 29, 1921
No. 25] NEW DELHI, SATURDAY, JUNE 19, 1999/JYAISTHA 29, 1921

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

सीमा शुल्क एवं केन्द्रीय उत्पादन शुल्क आयुक्त का कार्यालय

कोयम्बत्तूर, 26 मई, 1999

संख्या : 03/99 सीमा शुल्क (एन.टी.)

का.आ. 1668.—सीमा शुल्क अधिनियम 1962 की धारा 152 के खण्ड (ए) के अन्तर्गत भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के दिनांक 1 जुलाई, 1994 के अधिसूचना संख्या 33/94-सीमा शुल्क (एन.टी.) के अधीन अधोहस्ताक्षरी को प्रत्यायोजित शक्तियों का प्रयोग करते हुए, मैं, ए.के. मेहता, आयुक्त, सीमा शुल्क एवं केन्द्रीय उत्पाद शुल्क, कोयम्बत्तूर एतद्द्वारा तमिलनाडु राज्य, कोयम्बत्तूर जिला, पल्लडम तालुक के वेल्लिपालयम ग्राम को सीमा शुल्क अधिनियम, 1962 की धारा 9 के अन्तर्गत 100% निर्यातोन्मुख एकक (ई.ओ.यू.) के गठन के उद्देश्य से वेयरहाउसिंग स्टेशन के रूप में घोषित करता हूं। जैसा कि उद्योग मंत्रालय, औद्योगिक सहायता सचिवालय, नई दिल्ली द्वारा अनुमोदित है।

[फाइल पत्र सं. VIII/40/04/99-सीमा शुल्क-नीति]

ए.के. मेहता, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

Office of the Commissioner of Customs and Central Excise

Coimbatore, the 26th May, 1999

No. 03/99-CUSTOMS (NT)

S.O. 1668.—In exercise of the powers delegated to the undersigned vide Notification No. 33/94-Cus(NT) dated 1st July, 1994 by the Government of India, Ministry of Finance, Department of Revenue, New Delhi under clause (a) of Section 152 of the Customs Act, 1962, I, A.K. Mehta, Commissioner of Customs and Central Excise, Coimbatore,

hereby declare Semmipaayam Village, Palladam Taluk, Coimbatore District, State of Tamilnadu, to be a warehousing station udner Section 9 of the Customs Act, 1962 for the purpose of setting up of 100% Export Oriented Unit, as approved by the Ministry of Industries, Secretariate for Industrial Assistance, New Delhi.

[F. C. No. VIII/40/04/99-Cus. POL.]
A. K. MEHTA, Commissioner

आदेश

नई दिल्ली, 2 जून, 1999

स्टाम्प

का.आ. 1669.—भारतीय स्टाम्प शुल्क अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा मै. होटल एण्ड रिसोर्ट वेन्चुरस प्राइवेट लिमिटेड, कलकत्ता को मात्र सैंतीस हजार पांच सौ रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कम्पनी द्वारा जारी किए जाने वाले मात्र पचास लाख रुपए के समग्र मूल्य के प्रत्येक एक-एक सौ रुपए के डिबेन्चरों के स्वरूप वाले 50,000 विमोच्य, असुरक्षित, अपरिवर्तनीय बन्धपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है ।

[सं. 23/99-स्टाम्प/फा.सं. 33/29/99-बि.क.]
अपर्णा शर्मा, अवर सचिव

ORDER

New Delhi, the 2nd June, 1999

STAMPS

S.O. 1669.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M|s. Hotel and Resort Ventures Private Limited, Calcutta to pay consolidated stamp duty of rupees thirty seven thousand five hundred only chargeable on account of the stamp duty on 50,000 redeemable, unsecured, non-convertible bonds in the nature of Debentures of rupees one hundred each aggregating to rupees fifty lakh only to be issued by the said company.

[No. 23|99-STAMP|F. No. 33|29|99-ST]
APARNA SHARMA, Under Secy.

आदेश

नई दिल्ली, 2 जून, 1999

स्टाम्प

का.आ. 1670.— भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा मैं. हल्दिया पेट्रोकैमिकल्स लिमिटेड, कलकत्ता को मात्र बत्तीस लाख साठ हजार दो सौ पचास रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कम्पनी द्वारा जारी किए जाने वाले मात्र तैंतालीस करोड़ और सैंतालीस लाख रुपए के समग्र मूल्य के 00001 से 04347 तक की विशिष्ट संख्या वाले एक-एक लाख रु. मूल्य के डिबेन्चरों के स्वरूप वाले 4347 (श्रृंखला ग) 16% सुरक्षित, अपरिवर्तनीय, गैर संचयी, विमोच्य करार्धेय बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है ।

[सं. 24/99-स्टाम्प/फा.सं. 33/28/99-बि.क.]
अपर्णा शर्मा, अवर सचिव

ORDER

New Delhi, the 2nd June 1999

STAMPS

S.O. 1670.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M|s. Haldia Petrochemicals Limited, Calcutta to pay consolidated stamp duty of rupees thirty two lakh sixty thousand two hundred fifty only chargeable on account of the stamp duty on 4347 (Series C) 16% Secured, Non-Convertible, Non-Cumulative Redeemable and Taxable bonds in the nature of Debentures of rupees one lakh each bearing distinctive numbers from 00001 to 04347 aggregating to rupees forty three crores and forty seven lakh only to be issued by the said company.

[No. 24|99-STAMPS|F. No. 33|28|99-ST]
APARNA SHARMA, Under Secy.

आदेश

नई दिल्ली, 2 जून, 1999

स्टाम्प

का. आ. 1671.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा मै. एवरेडी इन्डस्ट्रीज इण्डिया लिमिटेड, कलकत्ता को मात्र तीस लाख पचत्तहर हजार रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कम्पनी द्वारा 4 मई, 1999

को जारी किए गए मात्र पांच करोड़ रुपए के समग्र मूल्य के 1 से 5,00,000 तक की विशिष्ट संख्या वाले सौ-सौ रु. मूल्य के 5,00,000 अपरिवर्तनीय विमोच्य असुरक्षित ऋण पत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है ।

[सं. 26/99-स्टाम्प-फा.सं. 33/34/99-बि.क.]

अपर्णा शर्मा, अवर सचिव

ORDER

New Delhi, the 2nd June, 1999

STAMPS

S.O. 1671.—In exercise of the powers conferred by clause (b) of sb-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M|s. Eveready Industries India Limited, Calcutta to pay consolidated stamp duty of rupees three lakh seventy five thousand only chargeable on account of the stamp duty on 5,00,000 Non-Convertible Redeemable Unsecured Debentures of rupees one hundred each bearing distinctive numbers from 1 to 5,00,000 aggrogating to rupees five crore only alloted on 4th May, 1999 by the said company.

[No. 26|99-STAMPS|F. No 33|34|99-ST]

APARNA SHARMA, Under Secy.

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 9 जून, 1999

का.आ. 1672.—सर्वसाधारण की सूचना के लिए यह अधिसूचित किया जाता है कि केन्द्रीय सरकार द्वारा मैसर्स बॉब हाउसिंग फाईनेंस लि., डी.-38-ए, अशोक मार्ग, सी-स्कीम, जयपुर-302001 को आयकर अधिनियम, 1961 की धारा 36(1)(viii) के प्रयोजनार्थ वर्ष 1999-2000 तक के लिए अनुमोदित किया गया है ।

2. यह अनुमोदन इस शर्त पर दिया जाता है :—

(i) कम्पनी का मुख्य उद्देश्य आवासीय उद्देश्यों के लिए मकानों का निर्माण करने अथवा उनकी खरीद करने के लिए दीर्घ-कालिक वित्त व्यवस्थाकरना है;

(ii) कम्पनी, आयकर अधिनियम, 1961 की धारा 139(1) के अन्तर्गत आय की विवरणी दायर करने की इसकी देय तारीख से पूर्व इस धारा के अधीन दावा की गई कटौती के विवरण सहित इसके लेखा परीक्षित लाभ और हानि के खाते और अथ शेष पत्र की एक प्रति प्रतिवर्ष प्रस्तुत करती है ।

(iii) अधिनियम के अनुसार यथा-अपेक्षित विशेष आरक्षण का सृजन और उसका अनुरक्षण किया जाता है; और

(iv) आयकर अधिनियम, 1961 की धारा 36(1)(viii) में निहित सभी अन्य शर्तें पूरी की जाती है ।

[अधिसूचना सं. 10951/फा.सं. 204/31/98-आयकरनि.II]

कमलेश सी. वरशनी, अवर सचिव

(Central Board of Direct Taxes)

New Delhi, the 9th June, 1999

S.O. 1672.—It is notified for general information that M/s. BOB Housing Finance Limited, D-38 A, Ashok Marg, 'C' Scheme, Jaipur-302001 has been approved by the Central Government for the purposes of section 36(1)(viii) of the Income tax Act, 1961, for the assessment years 1999-2000.

2. The approval is subject to the condition that :

(i) the company has been main object to carrying on the business of providing long term finance for construction or purchase of houses for residential purposes;

(ii) the company submits every year a copy of its audited profit and loss account and balance sheet alongwith a statement of deduction claimed under this section before its due date for filing return of income under section 139(1) of the Income tax Act, 1961;

(iii) special reserve as required is created and maintained as per the Act, and

(iv) all other conditions contained in section 36(1)(viii) of the Income tax Act, 1961, are fulfilled.

[Notification No. 10951/F. No. 204|31|98-ITA-II]

KAMLESH C. VARSHNEY, Under Secy.

नई दिल्ली, 9 जून, 1999

का.आ. 1673.— सर्वसाधारण की सूचना के लिए यह सूचित किया जाता है कि केन्द्रीय सरकार द्वारा मैसर्स अनाग्राम हाउसिंग फाइनेंस लि., 901, मकर काम्प्लैक्स, आश्रम रोड, अहमदाबाद को आयकर अधिनियम, 1961 की धारा 36(1)(viii) के प्रयोजनार्थ वर्ष 1996-97 1997-98 और 1998-99 तक के लिए अनुमोदित किया गया है ।

2. यह अनुमोदन इस शर्त पर दिया जाता है :—

(i) कम्पनी का मुख्य उद्देश्य आवासीय उद्देश्यों के लिए मकानों का निर्माण करने अथवा उनकी खरीद करने के लिए दीर्घ-कालिक वित्त व्यवस्था करना है;

(ii) कम्पनी, आयकर अधिनियम, 1961 की धारा 139(1) के अन्तर्गत आय की विवरणी दायर करने की इसकी देय तारीख से पूर्व इस धारा के अधीन दावा की गई कटौती के विवरण

कंपनी इसके लेखा परीक्षित लाभ और हानि के खाते और अंश शेष पत्र की एक प्रति प्रतिवर्ष प्रस्तुत करती है ;

(iii) अधिनियम के अनुसार यथा-अपेक्षित विशेष आरक्षण का सृजन और उनका अनुसरण किया जाता है; और

(iv) आयकर अधिनियम, 1961 की धारा 36 (i)(viii) में निहित सभी अन्य शर्तें पूरी की जाती हैं ।

[अधिसूचना सं. 10952/फा.सं. 204/6/96-आयकर नि. II]

कमलेश सी. वरशनी, अवर सचिव

New Delhi, the 9th June, 1999

S.O. 1673.—It is notified for general information that M/s. Anagram Housing Finance Ltd., 901, Sakar Complex, Ashram Road, Ahmedabad, has been approved by the Central Government for the purposes of section 36(1)(viii) of the Income tax Act, 1961, for the assessment years 1996-97, 1997-98 and 1998-99.

2. The approval is subject to the condition that :

(i) the company has been main object to carrying on the business of providing long term finance for construction or purchase of houses for residential purposes.

(ii) the company submits every year a copy of its audited profit and loss account and balance sheet alongwith a statement of deduction claimed under this section before its due date for filing return of income under section 139(1) of the Income tax Act, 1961;

(iii) special reserve as required is created and maintained as per the Act, and

(iv) all other conditions contained in section 36(1)(viii) of the Income tax Act, 1961, and fulfilled.

[Notification No. 10952|F. No. 204|6|96 ITA-II]

KAMLESH C. VARSHNEY, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 8 जून, 1999

का.आ. 1674.—रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (2) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा डा. जे.के. बागची, को 9 जून, 1999 से छः महीने की अवधि के लिए औद्योगिक तथा वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण के सदस्य के रूप में पुनर्नियुक्त करती है।

[फा०सं० 7/5/98-बी ओ I(i)]

के०के० मंगल, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 8th June, 1999

S.O. 1674.—In pursuance of the powers conferred by sub-section (1) of section 5 read with sub-section (2) of section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby re-appoints Dr. J. K. Bagchi as Member, Appellate Authority for Industrial and Financial Reconstruction, for a period of six months with effect from 9th June, 1999.

[F. No. 7|5|98-B.O.I(i)]

K. K. MANGAL, Under Secy.

नई दिल्ली, 8 जून, 1999

का०आ० 1675.—रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1) की धारा-6 की उपधारा (2) और (5) के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों के अनुसरण में, केन्द्रीय सरकार, एतद्द्वारा श्री एम.एस. दयाल को 1 अगस्त, 1999 से छः महीने की अवधि के लिए औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण के सदस्य के रूप में पुनर्नियुक्त करती है और इस अवधि के दौरान उन्हें औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण के अध्यक्ष के रूप में कार्य करने के लिए प्राधिकृत भी करती है।

[फा०सं० 7/5/98-बी ओ I(ii)]

के०के० मंगल, अवर सचिव

New Delhi, the 8th June, 1999

S.O. 1675.—In pursuance of the powers conferred by sub-section (1) of section 5 read with sub-section (2) and sub-section (5) of section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby re-appoints Shri M. S. Dayal as Member, Appellate Authority for Industrial and Financial Reconstruction, for a period of six months with effect from 1st August, 1999 and also authorises him to act as Chairman, Appellate Authority for Industrial and Financial Reconstruction, during this period.

[F. No. 7|5|98-B.O.I(ii)]

K. K. MANGAL, Under Secy.

विदेश मंत्रालय

(कोंसूलर अनुभाग)

नई दिल्ली, 4 मई, 1999

का.आ. 1676.—राजनयिक कांसली अधिकारी (शपथ एवम् शुल्क) अधिनियम 1948 (1948 का 41वां) की

धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत के दूतावास, मैड्रिड में श्रीमती वीणा रानी, को दिनांक 04-05-1999 से सहायक कौंसली अधिकारी का कार्य करने के लिए प्राधिकृत करती है।

[सं. टी.-4330/1/98]
एन.यू. अविरच्चन, अवर सचिव
(कौंसली)

MINISTRY OF EXTERNAL AFFAIRS

(Consular Section)

New Delhi, the 4th May, 1999

S.O. 1676.—In pursuance of the Clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Smt. Veena Rani, Assistant, in the Embassy of India, Madrid to perform the duties of Assistant Consular Officer with effect from 4-5-99.

[No. T-4330/1/98]
N. U. AVIRACHEN, Under Secy. (Cons)

वाणिज्य मंत्रालय

(विदेश व्यापार महानिदेशालय)

नई दिल्ली, 7 जून, 1999

का.आ. 1677—मै. गरवारे पोलिस्टर लि. वैस्टर्न एक्सप्रेस हाईवे, विले पार्ले (ईस्ट), बम्बई-400057 को ई पी सी जी स्कीम के अंतर्गत पूंजीगत माल के आयात के लिए 38,75,85,665/- रु. (अड़तीस करोड़ पचहत्तर लाख पचासी हजार छः सौ पैंसठ रुपये मात्र) के लिए लाइसेंस सं. पी/सी जी/2133360 दिनांक 8-8-94 जारी किया गया था।

2. फर्म ने ऊपर उल्लिखित लाइसेंस की सीमाशुल्क प्रयोजन की दूसरी प्रति जारी करने के लिए इस आधार पर आवेदन किया है कि लाइसेंस की मूल सीमाशुल्क प्रयोजन प्रति खो गई है/अस्थानस्थ हो गई है। और यह भी बताया गया है कि लाइसेंस की सीमाशुल्क प्रयोजन प्रति को सीमाशुल्क, सदन, बम्बई के पास पंजीकृत कराया गया था और 38,75,85,665 रुपये की राशि के लिए इसे प्रयोग में लाया गया है और अप्रयुक्त शेष राशि शून्य है।

3. अपने मत के समर्थन में, लाइसेंसधारी ने नौटरी पब्लिक मुम्बई के समक्ष विधिवत शपथ लेकर स्टाम्प पेपर पर एक हलफनामा प्रस्तुत किया है। मैं तदनुसार सन्तुष्ट हूं कि आयात लाइसेंस सं. पी/सी जी/2133360, दिनांक 8-8-94 की मूल सीमाशुल्क प्रयोजन प्रति फर्म द्वारा खो गई है अथवा अस्थानस्थ हो गई है। यथासंशोधित आयात (नियंत्रण) आदेश 1995 दिनांक 7-12-1995 की उप-धारा 9 (सी सी) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैं. गरवारे पोलिस्टर लि., बम्बई को जारी की गई उक्त मूल सीमाशुल्क प्रयोजन प्रति सं. पी/सी जी/2133360, दिनांक 8-8-94 को एतद्द्वारा निरस्त किया जाता है।

4. उक्त लाइसेंस की डुप्लीकेट सीमाशुल्क प्रयोजन प्रति पार्टी को अलग से जारी की जा रही है।

[फाइल स. 18/247/ए एम-95/ई पी सी जी-2]
के. चन्द्रामती, उप महानिदेशक,
विदेश व्यापार

MINISTRY OF COMMERCE

OFFICE OF DIRECTORATE GENERAL OF FOREIGN TRADE

New Delhi, the 7th June, 1999

S.O. 1677.—M/s. Garware Polyester Ltd., Western Express Highway, Vile Parle (East), Bombay-400057 were granted an import licence No. P/CG/2133360 dated 8-8-94 for Rs. 38,75,85,665/- (Rupees Thirty Eight Crores Seventy Five Lakhs Eighty Five Thousand Six Hundred and Sixty Five only) for import of capital goods under EPCG Scheme.

2. The firm has applied for issue of duplicate copy of Customs Purpose of the above mentioned licence on the ground that the Original Customs Purpose copy of the licence has been lost or misplaced. It has further been stated that the Customs Purpose copy of the licence was registered with Customs House, Bombay and has been utilised for a sum of Rs. 38,75,85,665/- leaving an unutilised balance of Rs. Nil.

3. In support of their contention, the licensee has filed an Affidavit on stamped paper duly sworn in before Notary Public, Mumbai. I am accordingly satisfied that the Customs Purpose copy of import licence No. P/CG/2133360 dated 8-8-94 has been lost or misplaced by the firm. In exercise of the powers conferred under Sub-clause 9(cc) of the Import (Control) Order, 1955 dated 7-12-1955 as amended, the said Original Customs Purpose copy No. P/CG/2133360 dated 8-8-94 issued to M/s. Garware Polyester Ltd., Bombay is hereby cancelled.

4. The duplicate Customs Purpose copy of the said licence is being issued to the party separately.

[F. No. 18/247/AM'95/EPCG-II]
K. CHANDRAMATHI, Dy. Director General of Foreign Trade

कोयला मंत्रालय

शुद्धि पत्र

नई दिल्ली, 4 जून, 1999

का.आ. 1678.—भारत के राजपत्र भाग-II खण्ड (3) उपखण्ड (ii) में तारीख 21 नवम्बर, 1998 के

के पृष्ठ क्रमांक 4337 से 4342 पर प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का.आ. 2372 तारीख 5 नवम्बर, 1998 में

पृष्ठ क्रमांक 4337 पर

अधिसूचना में

1 यह घोषणा करती है कि-के
(ख) में दूसरी पंक्ति में
"सारे" के स्थान पर "बोर" पढ़िये

पृष्ठ क्रमांक 4338 पर

1 ग्राम साकरी में अर्जित प्लाट सं. में
"204-280-4/3" के स्थान पर "204/2-204/" पढ़िये

2 ग्राम पौनी में अर्जित प्लाट सं. में
"154-5/154/6" के स्थान प "1545/-154/6" पढ़िये

सीमा वर्णन में

1 ख-ग में "ग्राम पानी" के स्थान पर "ग्राम पौनी" पढ़िये

2 घ-ङ में "ग्राम पोगी" के स्थान पर "ग्राम पौनी" पढ़िये

[सं. 43015/24/95-एल.एस.डब्ल्यू./पी.आर.आई.डब्ल्यू.]

के. एस. क्रोफा, निदेशक

स्वास्थ्य और परिवार कल्याण मंत्रालय

(भारतीय चिकित्सा पद्धति एवं होम्योपैथी विभाग)

नई दिल्ली, 7 जून, 1999

का.आ. 1679 :—केन्द्रीय सरकार, होम्योपैथी केन्द्रीय परिषद् अधिनियम, 1973 (1973 का 59) की धारा 13 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, होम्योपैथी केन्द्रीय परिषद् से परामर्श करने के पश्चात् उक्त अधिनियम की द्वितीय अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त द्वितीय अनुसूची में "केरल" शीर्षक के अधीन क्रम संख्यांक 9ख और उस संबंधित प्रविष्टियों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :—

1	2	3	4
"9ख केरल विश्व-विद्यालय	बेचलर ऑफ होम्योपैथिक मैडिसिन एंड सर्जरी	बी.एच.एम.एस.	1989 से आगे
	बेचलर ऑफ होम्योपैथिक मैडिसिन एंड सर्जरी (ग्रेडड)	बी.एच.-एस.एस. (ग्रेडड)	1994 से आगे"

[सं.वी. 27021/2/89-होम्यो]

लाल सिंह, अवर सचिव

पाद टिप्पणी :—मूल अधिसूचना भारत के राजपत्र भाग II, खंड 1, में का. आ. सं. 76, तारीख 20 दिसम्बर, 1973 द्वारा प्रकाशित की गई थी और तत्पश्चात् उसमें निम्नलिखित द्वारा संशोधन किया गया।

का.आ. 3496 तारीख 11-10-1997
का.आ. 325, तारीख 4-11-1978
का.आ. 1517 तारीख 26-2-1983
का.आ. 1480, तारीख 12-3-1983
का.आ. 3099, तारीख 21-6-1985
का.आ. 2048, तारीख 24-3-1986
का.आ. 2270, तारीख 24-5-1986
का.आ. 2501, तारीख 1-8-1990
का.आ. 2448, तारीख 4-8-1990
का.आ. 1182, तारीख 27-3-1991
का.आ. 1008, तारीख 8-3-1996
का.आ. 3124, तारीख 24-11-1996
का.आ. 2806, तारीख 13-9-1996
का.आ. 1277, तारीख 25-3-1996
का.आ. 699, तारीख 7-2-1977
का.आ. 1726, तारीख 3-10-1997
का.आ. 3126, तारीख 3-12-1997
का.आ. 6263, तारीख 21-12-1998
का.आ. 2503, तारीख 21-8-1990
का.आ. 710 तारीख 25-2-1992
का.आ. 891 तारीख 5-3-1992
का.आ. 1210 तारीख 23-4-1992
का.आ. 2669 तारीख 24-9-1993
का.आ. 978 तारीख 28-4-1992
का.आ. 1325 तारीख 13-5-1994
का.आ. 2363 तारीख 24-10-1994
का.आ. 1859 तारीख 17-8-1993
का.आ. 1277 तारीख 25-3-1996
का.आ. 93 तारीख 20-12-1995
का.आ. 2805 तारीख 13-9-1996
का.आ. 2475 तारीख 30-5-1996
का.आ. 2804 तारीख 20-9-1995
का.आ. 2727 तारीख 3-10-1997
का.आ. 2900 तारीख 28-10-1997
का.आ. 1027 तारीख 30-11-1998

MINISTRY OF HEALTH & FAMILY WELFARE

(Department of ISM & Homoeopathy)

New Delhi, the 7th June, 1999

S.O.1679. —In exercise of the powers conferred by sub-section (2) of section 13 of the Homoeopathy Central Council Act, 1973 (59 of 1973), the Central Government, after consulting the Central Council of Homoeopathy, hereby makes the following further amendment in the Second Schedule to the said Act, namely :—

In the said Second Schedule, under the heading "Kerala" for serial number 9B and the entries relating thereto, the following shall be substituted, namely :—

1	2	3	4
"9B University of Kerala	Bachelor of Homoeopathic Medicine and Surgery	B.H.M.S.	From 1989 onwards
	Bachelor of Homoeopathic Medicine and Surgery (Graded)	B.H.M.S. (Graded)	From 1994 onwards"

[V. 27021/2/89-Homoeo]
LAL SINGH, Under Secy.

Foot-note : The principal notification was published in the Gazette of India, Part II, section 1, S.O. No. 76 dated 20th December, 1973 and was subsequently amended vide :

S.O. 3496 dated 11-10-1977
S.O. 325 dated 04-11-1978
S.O. 1517 dated 26-02-1983
S.O. 1481 dated 12-3-1983
S.O. 3099 dated 21-6-1985
S.O. 2048 dated 24-3-1986
S.O. 2270 dated 24-5-1986
S.O. 2501 dated 1-8-1990
S.O. 2448 dated 4-8-1990
S.O. 1182 dated 27-3-1991
S.O. 1008 dated 8-3-1996
S.O. 3124 dated 24-11-1996
S.O. 2806 dated 13-9-1996
S.O. 1277 dated 25-3-1996
S.O. 699 dated 7-2-1997
S.O. 2726 dated 3-10-1997
S.O. 3126 dated 3-12-1997
S.O. 62 & 63 dated 21-12-1998
S.O. 2503 dated 21-08-1990
S.O. 710 dated 25-02-1992
S.O. 891 dated 5-3-1992
S.O. 1210 dated 23-4-1992
S.O. 2669 dated 24-9-1993
S.O. 978 dated 28-4-1992
S.O. 1325 dated 13-5-1994
S.O. 2363 dated 24-10-1994
S.O. 1859 dated 17-8-1993
S.O. 1277 dated 25-3-1996
S.O. 93 dated 20-12-1995
S.O. 2805 dated 13-9-1996
S.O. 2475 dated 30-5-1996
S.O. 2804 dated 20-9-1995
S.O. 2900 dated 28-10-1997
S.O. 2727 dated 3-10-1997
S.O. 1027(E) dated 30-11-1998

(स्वास्थ्य विभाग)

नई दिल्ली, 7 जून, 1999

का.आ. 1680.—जबकि भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खण्ड (ख) के उपबन्धों के अनुसरण में डा. एन.जी. विजय सिंह, निदेशक, क्षेत्रीय आयुर्विज्ञान संस्थान, इम्फाल को मणिपुर विश्वविद्यालय के सीनेट द्वारा 27 मार्च, 1999 से भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में निर्वाचित किया गया है;

अतः अब उक्त अधिनियम की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना सं.का.आ. 138 में निम्नलिखित और संशोधन करती है; अर्थात्:

उक्त अधिसूचना में "धारा 3 की उप-धारा (1) के खण्ड (ख) के अधीन निर्वाचित" शीर्षक के अन्तर्गत क्रम संख्या 63 और उससे संबंधित प्रविष्टि के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टि रखी जाएगी; अर्थात् :—

"63. डा. एन.जी. विजय सिंह, निदेशक, क्षेत्रीय आयुर्विज्ञान संस्थान, इम्फाल।	मणिपुर विश्वविद्यालय"

[सं. वी. 11013/9/99-एम.ई. (यू.जी.)]
एस.के. मिश्रा, डैस्क अधिकारी

(Department of Health)

New Delhi, the 7th June, 1999

S.O. 1680.—Whereas in pursuance of the provisions of clause (b) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), Dr. N. G. Bijoy Singh, Director, Regional Institute of Medical Sciences, Imphal, has been elected by the Senate of the Manipur University to be a member of the Medical Council of India from 27th March, 1999;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following further amendments in the notification of Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :—

In the said notification, under the heading 'Elected under clause (b) of sub-section (1) of section 3, for serial number 63 and the entry relating thereto, the following serial number and entry shall be substituted, namely :—

"63. Dr. N. G. Bijoy Singh Director, Regional Institute of Medical Sciences, Imphal.	Manipur University"

[No. V. 11013/9/99-ME(UG)]
S. K. MISHRA, Desk Officer

नई दिल्ली, 8 जून, 1999

का.आ. 1681.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार भारतीय आयुर्विज्ञान परिषद से परामर्श करने के पश्चात, उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है अर्थात :

उक्त प्रथम अनुसूची में,

(1) "गुजरात विश्वविद्यालय" के सामने "मान्यता प्राप्त आयुर्विज्ञान अर्हता" "रजिस्ट्रार चिरूरगी" (जनन मूत्रीय शल्य चिकित्सा) के सामने "पंजीकरण के लिए संक्षेपण" स्तम्भ में" "सितम्बर 1989 में अथवा उसके बाद" शब्दों और अंकों के स्थान पर "सितम्बर 1987 अथवा उसके बाद" शब्द और अंक रखे जायेंगे।

[संख्या वी. 11015/2/98-एम ई (यू जी)]
एम.के. मिश्रा, डेस्क अधिकारी

New Delhi, the 8th June, 1999

S.O. 1681.—In exercise of the powers conferred by Sub-Section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government after consulting the Medical Council of India makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule :—

(1) against the 'Gujarat University' against the 'Recognised Medical Qualification' 'Registrar Chirurgias, (Genito Urinary Surgery), in the column, 'Abbreviation for the Registration' for the words and figures 'in or after September, 1989', the words and figures 'in or after September, 1987' shall be substituted.

[No. V. 11015/2/98-ME(UG)]
S. K. MISHRA, Desk Officer

खाद्य और उपभोक्ता मामले मंत्रालय

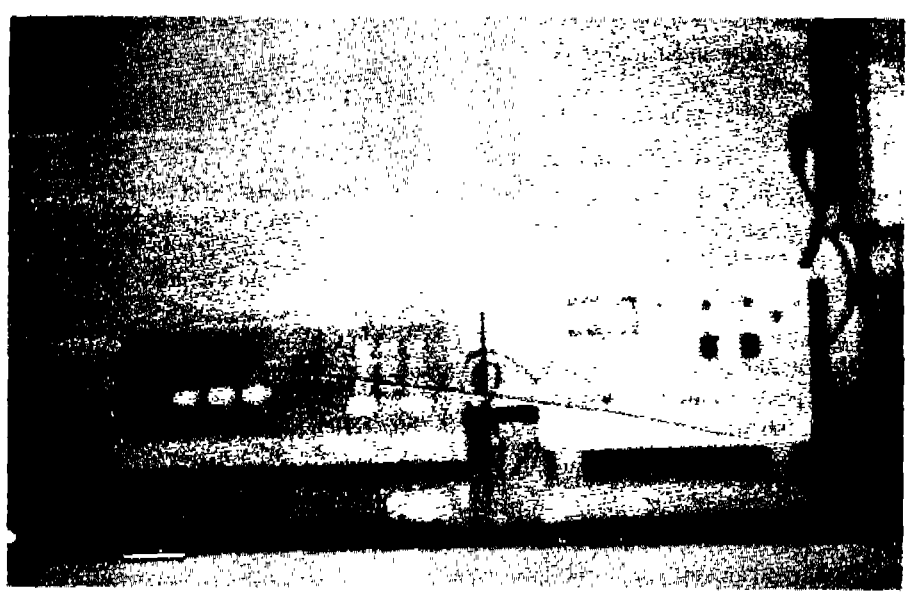
(उपभोक्ता मामले विभाग)

नई दिल्ली, 10 मई,1999

का.आ. 1682.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए वर्ग III यथार्थता (मध्यम यथार्थता) वाली "ई एल पी 050" श्रृंखला की, स्वत:सूचक, अस्वचालित, इलेक्ट्रानिक, तुला चौकी के माडल का, जिसके ब्रांड का नाम "डिलीजेंट" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण इलेक्ट्रो वे सिस्टम, 303-एस-524, अग्रवाल काम्पलेक्स, विकास मार्ग, शकरपुर दिल्ली-110 092 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/98/217 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 50000 किलोग्राम और न्यूनतम क्षमता 200 किलोग्राम है। सत्यापन मापमान अन्तराल (ई) 10 किलोग्राम है। इसमें एक आद्येयतुलन युक्ति है जिसका शत-प्रतिशत व्यकलनात्मक धारित अधेयतुलन प्रभाव है। भारग्राही आयताकार है जिसकी भुजाएं 9 × 3 मिली मीटर है। प्रकाश उत्सर्जक डायोड प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाणपत्र के अन्तर्गत, उसी श्रृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है, और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 से कम या उसके बराबर है (एन ≤10,000) तथा जिसका "ई" मान 1, 2, 5 श्रृंखला का है।

[फा.सं. डब्ल्यू.एम. 21(32)/97]

पी. ए. कृष्णमूर्ति, निदेशक, विधिक माप विज्ञान

MINISTRY OF FOOD AND CONSUMER AFFAIRS

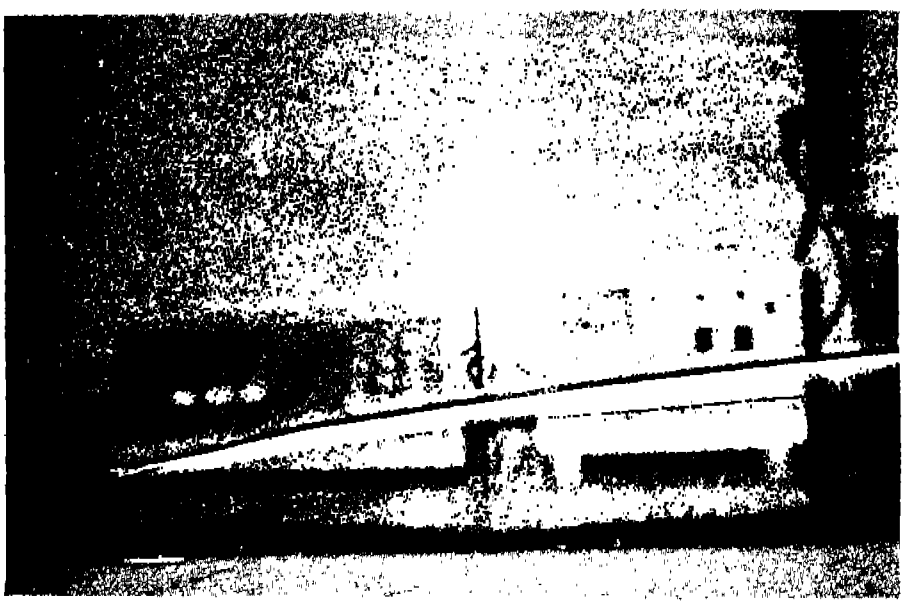
(Department of Consumer Affairs)

New Delhi, the 10th May, 1999

S. O. 1682.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain the accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of the self-indicating, non-automatic, electronic weighbridge of type "ELP-050" series of class III accuracy (Medium accuracy) and with brand name "DILIGENT" (hereinafter referred to as the Model) manufactured by M/s Electro Weigh System, 303-S-524, Aggarwal Complex, Vikas Marg, Shakarpur, Delhi-110092, and which is assigned the approval mark IND/09/98/217;

The said model is a Medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 50000 kg and minimum capacity of 200kg. The verification scale interval (e) is 10 kg. It has a tare device with a 100 per cent subtractive retained tare effect. The load receptor is of rectangular section of sides 9x3 metre. The light emitting diode display indicates the weighing result. The instrument operates on 230 volts and frequency 50 hertz, alternate current power supply.



Further, in exercise of the powers conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instrument of similsr make, accuracy and performance of same series with maximum number of verification scale interval (n) less than or equal to 10,000 ($n \leq 10000$) and with 'e' value of 1, 2, 5 series manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved model has been manufactured.

[F. No. WM-21 (32)/97]

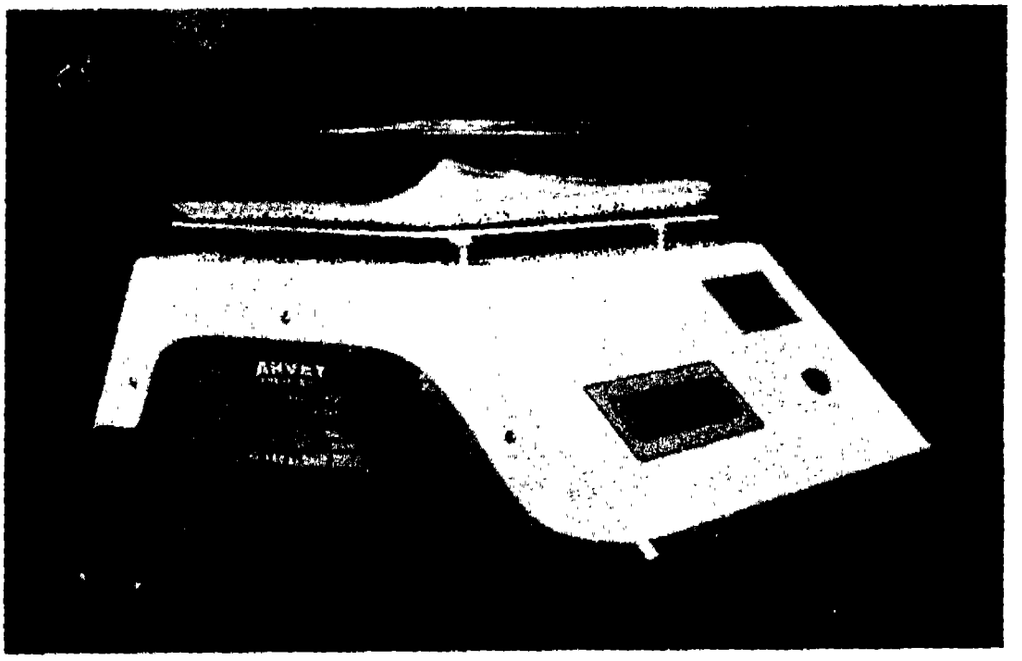
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 4 जून, 1999

का.आ. 1683.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए वर्ग III यथार्थता (मध्यम यथार्थता) वाली "ई डब्ल्यू एस 687" श्रृंखला की, स्वत:सूचक, अस्वचालित, इलेक्ट्रानिक, प्लेटफार्म तोलन मशीन के माडल का, जिसके ब्रांड का नाम "एवरी ई डब्ल्यू एस" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मेसर्स आर्वे स्केल कम्पनी, 27, थाडा गांव रोड, जीसीटी पोस्ट, कोयम्बतूर-641013 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/98/15 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

यह माडल मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 15 किलोग्राम और न्यूनतम क्षमता 100 ग्राम है। सत्यापन मापमान अन्तराल (ई) 5 ग्राम है। इसमें एक आधेयतुलन युक्ति है जिसका शत-प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। भारग्राही आयताकार है जिसकी भुजाएं 280×250 मिली मीटर है। प्रकाश उत्सर्जक डायोड प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाणपत्र के अन्तर्गत, उसी श्रृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन और उसी सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है, और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन ≤10,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1, 2, 5 श्रृंखला का है।

[फा.सं. डब्ल्यू.एम. 21(126)/97]

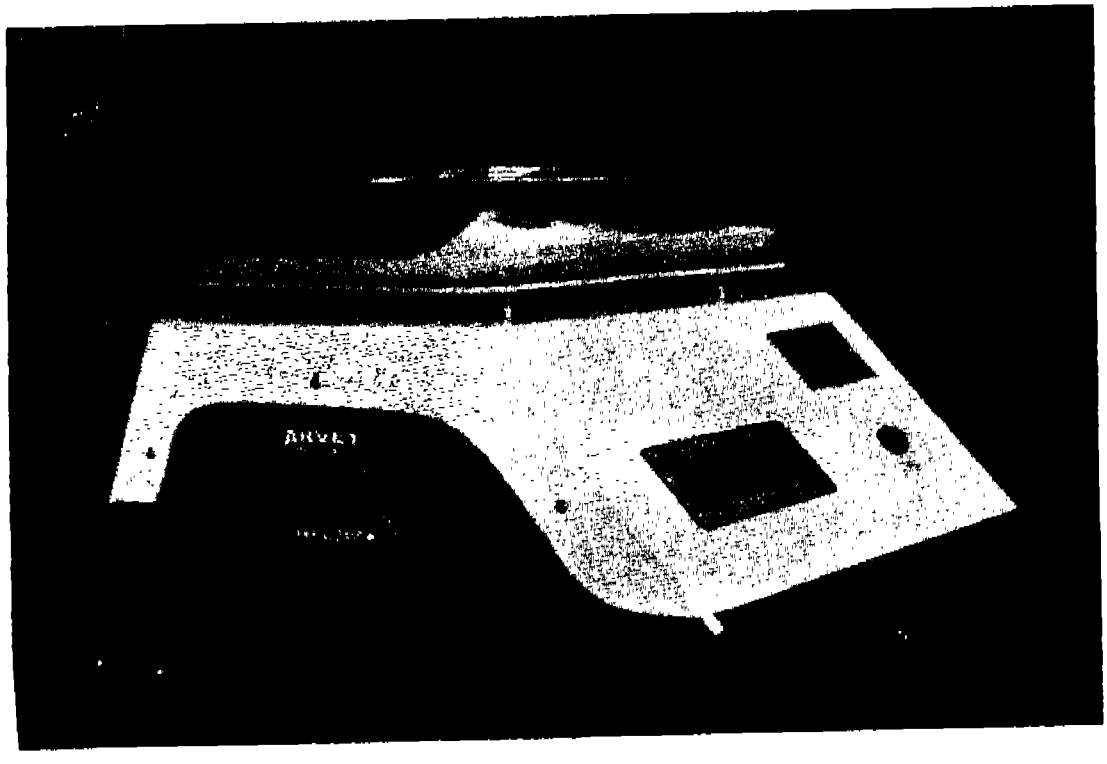
पी. ए. कृष्णमूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 4th June, 1999

S. O. 1683.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain the accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of the self-indicating, non-automatic, electronic Table Top weighing machine of type "EWS-687" series of class III accuracy (Medium accuracy) and with brand name "ARVEY EWS" (hereinafter referred to as the Model) manufactured by M/s Arvey Scale Company, 27, Thadagam Road, G.C.T. Post, Coimbatore-641013 and which is assigned the approval mark IND/09/98/15;

The said Model is a Medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 15 kg and minimum capacity of 100 g. The verification scale interval (e) is 5 g. It has a tare device with a 100 per cent subtractive retained tare effect. The load receptor is of rectangular section of sides 280×250 millimeter. The light emitting diode display indicates the weighing result. The instrument operates on 230 volts and frequency 50 hertz, alternate current power supply.



Further, in exercise of the poweers conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum number of verification scale interval (n) less than or equal to 10,000 (N≤10000) and with 'e' value of 1, 2, 5 series manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F. No. WM-21 (126)/97]

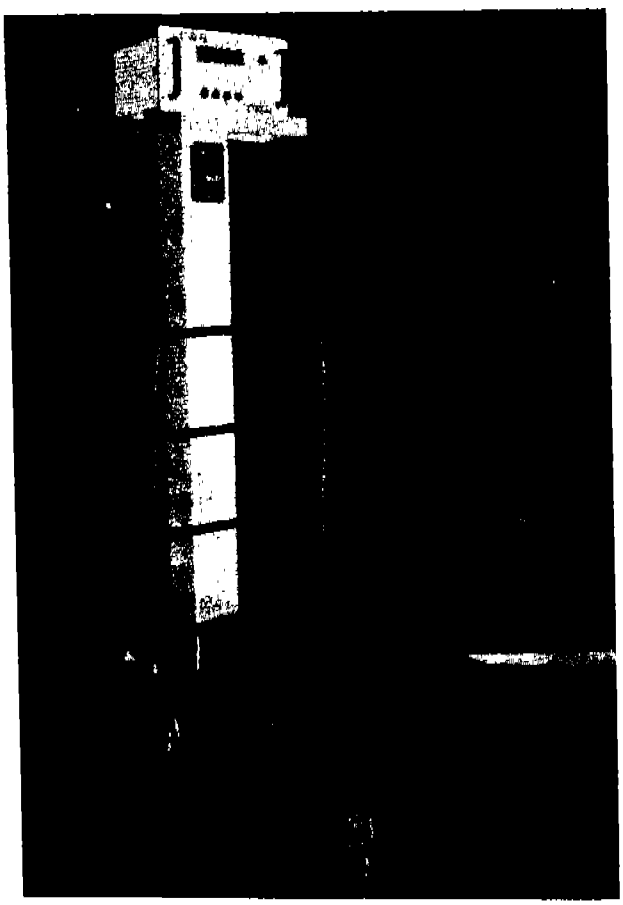
P. A. KRISHNAMOORTHY, Director, Legal Metrology

नई दिल्ली, 4 जून, 1999

का.आ. 1684.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (आकृति नीचे दी गई) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधियों में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए वर्ग III यथार्थता (मध्यम यथार्थता) वाली "ई डब्ल्यू एस 786" शृंखला की, स्वत:सूचक, अस्वचालित, इलेक्ट्रानिक, प्लेटफार्म तोलन मशीन के माडल का, जिसके ब्रांड का नाम "एवरी ई डब्ल्यू एस" है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मैसर्स आर्वे स्केल कम्पनी, 27, थाडा गांव रोड, जी सी टी पोस्ट, कोयम्बतूर-641013 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई एन डी/09/98/16 समनुदेशित किया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है;

यह माडल मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है, जिसकी अधिकतम क्षमता 100 किलोग्राम और न्यूनतम क्षमता 400 ग्राम है। सत्यापन मापमान अन्तराल (ई) 20 ग्राम है। इसमें एक आद्येयतुलन युक्ति है जिसका शत-प्रतिशत व्यकलनात्मक धारित आद्येयतुलन प्रभाव है। भारग्राही आयताकार है जिसकी भुजाएं 625×400 मिली मीटर है। प्रकाश उत्सर्जक डायोड प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज आवृत्ति की प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि माडल के इस अनुमोदन प्रमाणपत्र के अन्तर्गत, उसी शृंखला के उसी मेक, यथार्थता और कार्यकरण वाला ऐसा तोलन उपकरण भी होगा, जिसका विनिर्माण उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन सामग्री से किया जाता है जिससे अनुमोदित माडल का विनिर्माण किया गया है, और जिसके सत्यापन मापमान का अन्तराल (एन) की अधिकतम संख्या 10,000 (एन ≤10,000) से कम या उसके बराबर है तथा जिसका "ई" मान 1, 2, 5 शृंखला का है।

[फा. सं. डब्ल्यू. एम.-21 (126)/97]

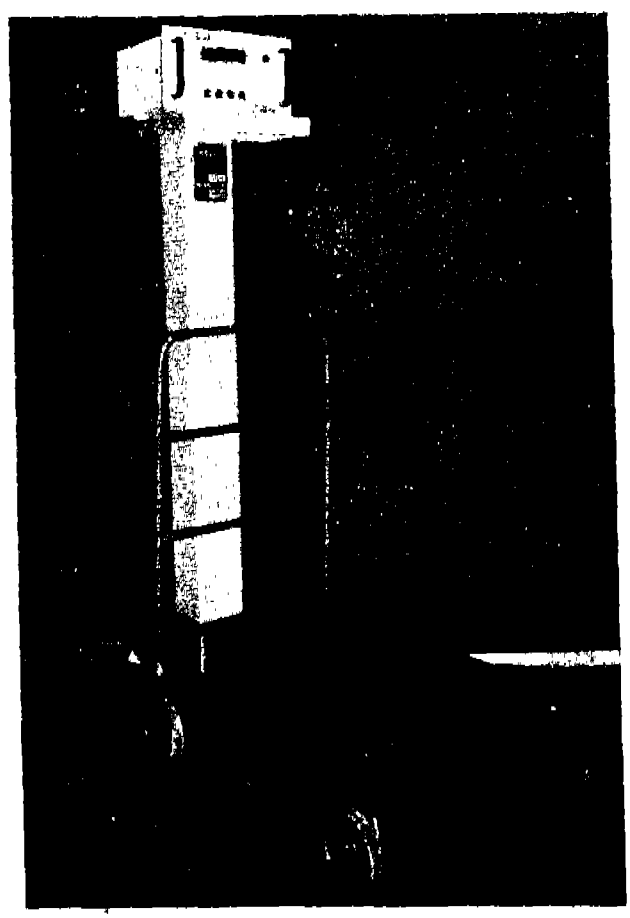
पी. ए. कृष्णमूर्ति, निदेशक, विधिक माप विज्ञान

New Delhi, the 4th June, 1999

S. O. 1684.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain the accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the model of the self-indicating, non-automatic, electronic Platform weighing machine of type "EWS-786" series of class III accuracy (Medium accuracy) and with brand name "AVERY EWS" (hereinafter referred to as the Model) manufactured by M/s Arvey Scale Company, 27, Thadagam Road, G.C.T. Post, Coimbatore-641013 and which is assigned the approval mark IND/09/98/16;

The said Model is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 100 kg and minimum capacity of 400 g. The verification scale interval (e) is 20 g. It has a tare device with a 100 percent subtractive retained tare effect. The load receptor is of rectangular section of sides 625 × 400 millimeter. The light emitting diode display indicates the weighing result. The instrument operates on 230 volts and frequency 50 hertz, alternate current power supply.



Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum number of verification scale interval (n) less than or equal to 10,000 ($N \leq 10000$) and with 'e' value of 1, 2, 5 series manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F. No. WM-21 (126)/97]

P. A. KRISHNAMOORTHY, Director, Legal Metrology

श्रम मंत्रालय

नई दिल्ली, 19 मई, 1999

का.आ. 1685.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/6/94-आईआर (बी-II)]

सनातन, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 19th May, 1999

S.O. 1685.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 19-5-99

[No. L-12012/6/94-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI B.L. JATAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH.

Case No. I.D. 31 of 1994.

Secretary
Central Bank of India Employees Union,
811, Phase II, Urban Estate Focal Point,
Ludhiana-141010

.....Petitioner

Vs.

Regional Manager,
Central Bank of India
470 Sayal House, Lajpat Nagar Market
Model Town Road, Jalandhar.

.....Respondent.

REPRESENTATIVES:

For the workman—None.

For the management—Shri S.L. Batta

AWARD

(Passed on 16th March 1999)

The Central Govt. Ministry of Labour vide Notification No. L-12012/06/94-I.R. (B.2) dated 22nd April, 1994 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Central Bank of India, Jalandhar in imposing the penalty of stoppage of one increment permanently on Shri H.R. Saini, Clerk/Assistant Cashier/Godown Keeper vide their order dated 10-12-85 is justified? If not, to what relief is the said workman entitled to".

2. Today the case was fixed for evidence of the workman. Despite several notices none appeared on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above the present reference is returned to the Appropriate Govt. for want of prosecution.

B.L. JATAV, Presiding Officer

Chandigarh.
16-3-1999

नई दिल्ली, 19 मई, 1999

का०आ० 1686.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं० एल-12012/63/94-आई.आर. (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1686.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/63/94-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
BANGALORE

Dated 10th May, 1999

PRESENT : JUSTICE R. RAMAKRISHNA

PRESIDING OFFICER

C.R. No. 56/1994

I PARTY	II PARTY
Shri L. Gopinath No. 417/11, 9th 'E' Main, Vijaynagar, BANGALORE-40.	The Dy. General Manager Syndicate Bank, Z.O. Gandhinagar, BANGALORE-09.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/63/94-IR (B.II) dated 26-5-94 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Syndicate Bank Bangalore in dismissing Shri L. Gopinathan, Clerk, from service w.e.f. 4-5-92 is justified, If not, to what relief is the said workman entitled to?"

2. The first party joined the bank in the year 1973. He has worked at various branches of the Bank. When he was suspended from the service vide order dated 17-12-90 he was working at Vijaynagar branch, Bangalore.

3. Vide charge sheet dated 7-5-1991 he was charged for having received a sum of Rs. 25,000/- from a customer Shri V. Venkataramana on 8-12-90 and failed to credit to his account though he has endorsed on the counterfoil of the challan "Cash Received". He was found absent for few days and during that time the said Venkataramana found that the amount was not credited to his account, therefore he made a complaint on 10-12-90. However the first party has credited Rs. 25,000/- in the account of Shri V. Venkataramana on 12-12-90.

4. The other charge levelled against the first party was that while operating his SB a/c and OD a/c he has issued cheques on 14 occasions for sums aggregating Rs. 15,560/- without maintaining sufficient balance in his account. During the period between 6-4-90 and 10-1-91 he had issued cheques on 121 occasions for sums aggregating to Rs. 2,36,650.50 drawn on his above said OD a/c without maintaining sufficient/ adequate balance in the said account. Therefore he was charged for gross misconduct of doing acts prejudicial to the interests of the Bank, vide Clause 19.5 (j) of the Bipartite Settlement. After conducting the domestic enquiry, on the result of the report which was against the first party, the disciplinary authority proposed the punishment of dismissal and after getting the explanation of the first party he was dismissed from service. This order was up held by the Appellate Authority when the workman filed an appeal against the order of the disciplinary authority. Since the first party raised several objections on the validity of domestic enquiry this tribunal has framed an additional issue on this point. After giving opportunity to both parties this court by considered order has given a finding in favour of the management. Thereafter the parties are directed to address their arguments on merits. Both parties have filed written arguments.

5. The enquiry officer reached a conclusion and gave a report of the enquiry as per Ex. M1 (k). He has assessed both oral and documentary evidence and concluded as follows:

"On a careful perusal of all the materials placed before me and in view of the reasons explained above I hold Shri L. Gopinath guilty of gross misconduct of misappropriation of customer's money thereby "doing acts prejudicial to the interest of the Bank" vide clause 19.5 (j) of the Bipartite Settlement and also guilty of issuing cheques indiscriminately without sufficient funds in his account and thereby once again "doing acts prejudicial to the interest of the Bank" vide clause 19.5 (j) of the Bipartite Settlement as appearing in charge sheet."

6. It is to be noted at this juncture, the workman pleaded guilty before the enquiry officer, inspite of his plea the management examined three witnesses and they have been cross examined by the first party. The first party have not examined any witnesses and he gave a statement on his behalf. Therefore the enquiry officer not only taken into consideration the plea of guilt made by this party as voluntary and also taken into consideration the oral and documentary evidence of the management witnesses and documents produced.

7. The first party as it regards to the factum of pleading guilty before the enquiry officer, he has retracted his position and contended that though he has denied the charge when he was kept under suspension and also in the reply to the charge sheet he has persuaded by the management to plead guilty thereby lenient view will be taken as it relates to the punishment. The management have totally denied the defence of the first party as it relates to plea of guilt.

8. The first submission of the first party is that the enquiry officer without examining the complainant who is the main witness to prove the first party has proceeded to hold that the first charge is proved on the basis of the evidence of the Vigilance Officer, who spoke to the contents of the complaint made by Shri V. Venkataramana.

9. This submission of the first party is heard and rejected. Though Shri V. Venkataramana was not examined there was no insistence by the defence to call the said witness for the examination. However the management made efforts to get that witness by issuing necessary communications. Since this witness remained absent the vigilance officer marked the complaint filed by Shri V. Venkataramana and the enquiry officer has taken this evidence to prove the Complaint MEX 9. The enquiry officer also relied on the plea of guilt made by this workman and therefore there was no impediment to accept this fact through the vigilance officer. Therefore this contention is rejected.

10. The learned advocate for the second party stated that the first party who has pleaded guilty for the charges levelled against him has come up with a new case made both in his claim statement and written arguments. Therefore the said contentions shall not deserve any consideration by this tribunal. It is submitted that since both the charges are proved and there is no perversity in the order of the enquiry officer the first party is not entitled for any relief.

11. In Narayan Dattatrya vs. State of Maharashtra, AIR 1997 SC 2148 it was held that if the Disciplinary enquiry was

conducted observing natural justice which proves misappropriation of public money the removal from service is appropriable punishment.

12. In New Shorrock Mills vs. Maheshbhao T. Rao, 1997 FJR (Vol. 90) SC 1, Scope of jurisdiction of Labour Court in ordering reinstatement and payment of backwages in a case where the enquiry was conducted legally and properly and the order of discharge was not passed by way of victimisation.

13. The court held :

> "On the facts, that this was not a case in which the court could come to the conclusion that punishment awarded was disproportionate to the employees' conduct and his case record, and that it was not proper for the Labour Court to interfere with the punishment awarded and order reinstatement and payment of part of the back wages."

14. In Bank of India, Regional Office, Bangalore vs. D. Padmanabhudu and another 1994 (2) Kar. L. J. 425. A learned single Judge after agreeing with the findings of the enquiry officer that the misappropriation was proved, has interfered with the award of the tribunal in granting relief to the workman and confirmed the order of dismissal made by the disciplinary authority.

15. The law is uniform that whenever a bank employee found indulging in misappropriating the public money the order of dismissal is the appropriate punishment to be imposed unless there are any extraneous circumstances to mitigate such misconduct.

16. The main contention urged in the written arguments filed on behalf of the first party are :—

1. The Disciplinary Authority without giving proper opportunity to the workman proceeded to pass an order of dismissal which is against the Clause 19.12 (a) of the first Bi-partite Settlement dated 9-11-1966.
2. The Disciplinary Authority failed to consider the previous record of the workman which is also a condition precedent under Clause 19.12 (c) of the Bio-partite Settlement.
3. The Disciplinary authority has not considered the fact that the finding of the enquiry officer is perverse as it relates to Charge No. 2 and therefore the order of dismissal is not sustainable under law.

17. As it regards to ground No. 1 urged by the first party it is undisputed that the personal hearing and consideration of the written representation was made before a disciplinary Authority who after giving personal hearing and the written representation, has not passed any order as he was transferred from that place. Thereafter Shri U. M. Kini took charge as Deputy General Manager and he passed the order on 4-5-1992.

18. Though the order is not marked as Exhibit the same is found at page No. 52 of the Enquiry proceedings Ex. M-1. Shri U. M. Kini infact elaborately narrated the facts in his order and came to the conclusion that he did not found any extraneous circumstances to view the matter leniently. Therefore it is clear that the workman was not heard personally by Shri U. M. Kini. Therefore it is the contention of the first party that the order of the disciplinary authority imposing a punishment of dismissal without giving a personal hearing is defective and liable to be set aside.

19. Under Clause 19.12 (a) of the first Bi-partite Settlement the words used was that "*he shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.*" If any authority were to impose punishment, which virtually an economic death for a workman, maximum care should be taken to appreciate the letter of law. Unless such procedure adopted the conclusion will be that there is no proper application of mind.

20. In State Bank of Mysore vs. R. Shamanna 1985 I LLJ 297, the learned Judges of a Division Bench have considered this aspect of the matter. Mr. Justice Hakeem as he then was, rendered the judgement. His Lordship stated :

> "The rules require that the delinquent official shall be given a hearing as regards the nature of the proposed punishment in case charges were established against him. The rule requires something more than mere opportunity to be afforded to the delinquent official. It requires a hearing to be given. The difference between mere opportunity and hearing is explicit. There may be fusion between the two, but there should not be confusion between the two concepts. Opportunity may be extended to hearing but hearing cannot be condensed or limited to mere opportunity to file objection or representations. Hearing means ordinarily an opportunity of being heard. That means personal hearing. When the rules governing the conduct of enquiry specifically provide that the hearing shall be given to the delinquent employee, he should be given a fair hearing and failure to give such a hearing would vitiate the order of penalty."

21. The next contention of the first party is that the Disciplinary Authority failed to consider his clean record of service, as it relates to his work inside the bank. Infact when MW-2 was cross-examined on this point he says :

Q. Whether you received any complaint against me?

A. To my memory no complaint other than this in writing seem to have been received.

Q. Do you agree that I have been discharging my duties to the entire satisfaction of my superiors?

A. Workwise he is very good. No adverse comments. He even used to sit late and do work whenever necessary.

Under this clause "in awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any of the employee and any other aggravating or extenuating circumstances that may exists".

22. This provision is not an empty formality. The disciplinary authority shall give serious attention on this aspect of the matter. There will be cases where a person will have a clean record of his conduct inside the bank, in that even that fact should be taken into consideration, when an isolated misconduct is committed by him. There also if any exceptional circumstances for committing such misconduct shall also be taken into consideration. We are not telling merely that this workman found temporarily misappropriated a sum of Rs. 25000/- for about 5 days it can not be viewed seriously. But while considering that fact the management shall be taken into consideration his previous antecedents. This provision of considering the previous clean record is mandatory. In Ziakh Vs. Firestone Tyre and Rubber Co. Ltd., (1954) I LLJ 281 (Bombay H. C), Shantilal Fethalal vs. J. V. Mills Ltd. Ahmedabad 1958 ICR 358, Mahalaxmi Textile Mills Vs. L. C. AIR 1964, Mad. 51 (1963) CLJ 58, Borosil Glass Works Ltd. Vs. M. G. Chitale and Richard M. D'Souza (1974) 2 LLJ 84, B. C. Mills vs. IT (1969) 28 FLR *6,* this aspect of the law was considered and where ever failure to take this fact instructions was found the order was annuled.

23. Now coming to the third contention raised by the workman it was found that his workman was in habit of issuing cheques to the parties on his private account without maintaining proper funds, on many occasions, the cheques issued by him came to be dishonoured for want of funds. The management have not issued any Memos on this aspect of the matter except tagging on this misconduct in the charge sheet. But the management should appreciate under what circumstances such transactions were made by the first party and the nature of such transactions. It is clear no complaint were given to the management on this aspect of the matter and also no cases filed against the first party for issuing cheques without funds is an offence punishable under Indian Penal Code.

24. Having regard to these facts and circumstances the order of dismissal made bythe second party without following the mandatory provisions is nullity under law. Therefore I make the following Order.

ORDER

The second party are not justified in dismissing the services of the first party w.e.f. 4-5-1992. Therefore the second party are directed to reinstate the first party to the position he held with the benefit of continuity of service. With regard to payment of backwages, since the first party also contributed to some extent he is entitled only 50% of the backwages. the reference is answered accordingly.

(Dictated to the stenographer, transcribed by her corrected and signed by me on 10th May, 1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 मई, 1999

का. आ. 1687.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-1, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-5-99 को प्राप्त हुआ था।

[सं. एल-12012/67/94-आई आर(बी-II)]
सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1687.—In pursuance of section 17 of the Industrial Dispute act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 18-5-1999.

[No. L-12012/67/94-IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present : Sri C. V. RAGHAVAIAN, B.Sc., B.L. Industrial Tribunal-I

Dated : the 16th February, 1999

INDUSTRIAL DESPUTE NO. 2 of 1998

Between

Smt. S. Ramadevi W/o S. Rashavendra Rao,
9/50, Gandhi Nagar, Nuzwid-521201, A.P. —Petitioner

And

The General Manager(Pers),
Syndicate Bank, Head Office : Manipal,
Karnataka-576119. —Respondent

Appearances : M/s. B.G. Ravinder Reddy and S. Prabhakar Reddy, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha and A. V. Appa Rao, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order No. L-12012/067/94-IR(B-II) dated 15/16-1-1998 referred the following Industrial Dispute under Section 10(1)

(d) of Industrial disputes act, 1947 for adjudication to this Tribunal.

> "Whether the action of the management of Syndicate Bank in terminating the services of Smt. S. Ramadevi is legal and justified ? If not, to what relief the workman is entitled ?"

Both the parties made their appearance through their Advocates and filed their respective pleadings.

2. The petitioner herself filed a claim statement contending as follows : The petitioner was directed by the Respondent-Bank to undergo training for one month at Staff Training College, Hyderabad and she completed the same suceessfully. After that she was appointed as clerk on probation vide orders dated 4-9-1973 in the Vijayawada Main Branch of Syndicate Bank and she was served with another appointment order in Form-'S' under the provisions of A. P. Shops and Establishments act, 1966. Thereafter she was transferred to Buckinghampet Branch, Vijayawada on or about 19-1-1974 her probation was extended by three months from 12-3-1974 as per the orders dated 4-3-1974. During her service she worked with all sincerety and efficiently. Her performance will be reviewed at the end of the probation period i.e. 11-6-1974. She was waiting for her confirmation in the services of the Bank as Clerk, but she was illegally stopped from services by the proceedings dated 30-5-1974 intimating that she would be relieved from the services of the Bank on 11-6-1974, without assigning any reasons therefor. The Manager of Buckinghampet, Vijayanada-I issued a memo dated 11-5-1974 indicating that he had a preconceived and determined mind as against the confirmation of the petitioner. Aggrieved by the same she sent number of representations but in vain. She sent a legal notice through her Advocate on 15-4-1993 demanding for her reinstatement and payment of backwages. In turn, the Local Manager of the Bank replied that her performance was found unsatisfactory during her probation period and therefore her services were terminated with effect from 11-6-1974. Thereafter she sent representations and reminders protesting against the above observations. But her representations were not considered. She contended that she was not given any opportunity before terminating her services.

She contended further that her appointment is governed by the various provsions of A. P. Shops and Establishments act as well as the I.D..act which provides for issue of show cause notice charge sheet etc., But the Bank did not do so. Hence the observations made by the Local Manager Joint Staff Controller are one sided and arbitrary. The original proceedings dated 11-5-1974 of the Local Manager, serving the proceedings of the Bank dated 30-5-1974 is a clear Act of colourable exercise of administrative power, amounting to punitive proceedings in casting a stigma to the petitioner, without due enquiry in the matter which are unsustainable. The request of the petitioner for her reinstatement was not considered by the Bank. Hence she approached the Conciliation Officer but it ended in failure, which resulted in this reference. She further contended that three was no delay on her part for referring this dispute and in various judgments of High Court/Supreme Court it has been held the delay cannot be a ground for denial of justice. She further contended that the I.D. Act protects the probationer but the Bank authorities did not follow the same. Her illegal stoppage from her services amounting to illegal dismissal and termination of service by the Bank cannot be supported on facts or law and the proceedings dated 30-5-1974 as well as 15-5-1993 of the Bank are null, void, nonest and liable to be set aside. She therefore prayed for her reinstatement into service with all other attendant benefits.

3. The respondent also filed lengthy counter, resisting the claim petition filed by the petitioner. The averments in brief in it are that the petitioner who was a probationer in the Bank was dispensed from further services in 1974 at the end of the extended period of probation. The respondent contended that the Supreme Court and High Courts held that 4 years delay is fatal to reference and the Tribunal cannot adjudicated the rederence. The appointment order issued to her clearly shows that her services will be terminated without assigning any reason at any time during probation giving a month's notice or salary in lieu of notice. Initially she was appointed for a period of six months on probation with a clause that Bank may extend the period of probation to a maximum period of nine months. During her probationary period the Management was not satisfied with her performance. Accordingly she was served with a letter dated 30-5-1974 informing that her services were dispensed with from 11-6-1974 i.e. at the end of her probationary period as per the terms and conditions of her appointment order. She was paid one month's salary in lieu of notice period. Accordingly she was relieved of her services after office hours on 11-6-1974. She raised a dispute after 20 years. The bank submitted a detailed remarks to the Government of India, Mininstry of Labour's letter dated 12-4-1994 that the dispute is hit by delay and latches. Subsequently the Government closed the matter. Now the Government of India reopened and referred this dispute without looking into any legal aspect and limitation latches. Hence the reference is itself liable to be dismissed on the ground of delay and latches. It can be seen from the judgements of various High Courts and Supreme Court that the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire in this case the respondent Bank has dispensed with the services of the petitioner during her probationary period in terms of appointment and that too she was paid one month's salary in lieu of notice. Hence the Bank fulfilled the terms and conditions at the time of ther termination as per the appointment order. There is no merit in the dispute raised by the petitioner. Right from the beginning the performance of the petitioner was found to be below par and she was found not improving in her work, and this was immediately brought to the notice of petitioner in writing. But she did not improve performance in her work. However the

Bank extended her probation period up to 3 months for her improvement in her work. But she had not shown any improvement in her work and she was not taking any interest in her work inspite of being put on notice. Hence the Bank did not take her services for her confirmation. Whenever a candidate performance is appraised during the probation period initiation of disciplinary action or conducting the enquiry does not arise. It admitted that she sent a legal notice on 15-4-1993 and the Bank replied to it on 15-5-1993. But she sent the notice after lapse of 19 years and this itself indicates how deligent she is even in her personal work. The contention raised by the petitioner that as per the provisions of A. P. Shops and Establishment Act and I.D. Act, the management should initiate a disciplinary action is not a correct fact. The petitioner misconstrued the legal position as well as the provisions of the enactment. Therefore the petitioner is not entitled to any relief sought for by her. It prayed for dismissing the claim petition filed by her.

4. In support of their respective pleading, the petitioner herself examined as WW1 and marked Exs. W1 to 35 while the respondent examined its Officer as MW1 and marked Exs. M1 to 7.

5. The point for consideration is whether the action taken by the Management in terminating the services of the petitioner Smt. S. Ramadevi is legal and justified and if not what relief the petitioner is entitled to ?

6. **Point :**—This reference under section 10(1)(d) of the I.D. Act arises out of termination of service of Smt. S. Rama Devi who was emloyed as Clerk on probation in Vijayawada main Branch of Syndicate Bank on the terms and conditions incorporated in Ex. W5 appointment order dated 4-9-1973. The petitioner is seeking her reinstatement on the ground that her termination from the service would amount to retrenchment within the meaning of Section 2(OO) of I.D. Act and the same is void, ab initio due to violation of Section 25-F of I.D. Act as she worked more than 240 days i.e. from 4-9-1973 to 11-6-1974 which is however disputed by the respondent Management.

7. Following are the admitted facts as revealed from the oral and documentary evidence placed on record by both the parties. Pursuant to the notification issued by the Respondent Bank calling applications for the post of Clerks, the petitioner applied for the same. She was called for the written test on 12-9-1971 as per Ex. W1 call letter dated 28-8-1971 sent by the Bank. As she was successful in the written test. She was sent Ex. W2 letter dated 4-11-1971 to appear for Viva Voce Test on 18-11-1971 at Vijayawada Main Branch of Syndicate Bank. She was successful in the Viva Voce Test also. Hence the respondent-Bank sent Ex. W3 intimation dated 30-12-1971 informing her that her name has been included in the panel which will be valid upto 31-12-1972. Subsequently the Respondent-Bank sent Ex. W4 letter dated 12-6-1973 informing the petitioner that she has been selected for training at Staff Training College, Gunfoundry Hyderabad and asking her to attend for training from 29-6-1973 by reporting herself to the said college on 28-6-1973. After successful completion of the training, the respondent appointed the petitioner as Clerk on probation under Ex. W5 appointment order dated 4-9-1973 at Vijayawada Main Branch. She was also further informed in the said order that she has to do typing work also and to report herself for duty at Vijayawada Main Branch within 7 days. Ex. W6 which is same as Ex. M4 terms and conditions of the appointment dated 4-9-1973 is enclosed to Ex W5 for information of the petitioner examined as WW1. The petitioner was also sent Ex. W7 appointment order in form 'S' under the Shops and Establishments Act under Ex. W6 covering letter dated 4-9-1973.

8. The petitioner reported for duty at the main branch Vijayawada pursuant to the said appointment order under which she was appointed as Probationary Clerk and placed on probation for a period of 6 months. While working at Main Branch, Vijayawada, she was served with Ex. M1 Advisory Memo dated 18-9-1973 bringing to her notice, her deficiencies in discharging the duties as clerk and advising her to imporve hereself in the work. She was served with another Advisory Memo Ex. M2 dated 20-12-1973 wherein the Manager of Vijayawada Main Branch informed her that inspite of repeated advices, there is no improvement in her work and she has committed innumerable mistakes in the work entrusted to her and her figure work is not at all satisfactory and in sufficient and wrong addresses are written by her on the postal outward covers and the post pertaining to one branch is posted to another branch repeatedly and he also advised her to come upto their expectation by avoiding such mistakes in future. Thereafter she was transferred to Buckinghampet Branch under Ex. W8 Memorandum dated 19-1-1974. In view of the difficiencies pointed out in the above advisory letters, her probation was extended by 3 months from 12-3-1974 under Ex. M3 order dated 4-3-1974 and she was further informed that if she failed to improve in her work during the extended period of probation, it may not be possible to confirm her in its service. The Manager, Buckinghampet sent Ex. M6 confidential letter dated 19-3-1974 to the Managing Director, Head Office, Manipal informing that the performance of the petitioner is not upto their expectation though she was entrusted typing work, that she has typed each letter two or three times, as her knowledge of typing is very poor and that he recommended for transferring her to some other nearer branches again for further training and observation. Ex. M7 performance appraisal report appears to have been sent to the Head Office on 22-2-1974 by the Branch Manager, Buckinghampet Branch.

9. Thereafter the petitioner was sent Ex. W9 letter dated 30-5-1974 informing her that the management is unable to confirm her in the permanent service of the Bank and as such her services will be dispensed with effect from the end of probationary period in terms of the appointment order, and enclosing pay slip for a month's salary in lieu of a month's notice and that it was further informed her that she will be

relieved from the services of the Bank at the close of office hours on 11-6-1974. Pursuant to the said order she was relieved on the said date by the Branch Manager, Buckinghampet Branch under Ex. M5 memorandum of relieving order. But the date at the top of the order was mentioned as 'May 11, 1974' which appears to have been typed by mistake as spoken to by MW1 as it is an admitted fact that the petitioner was relieved from the services after closure of the working hours of the Bank on 11-6-1974 pursuant to Ex. W9 order.

10 The petitioner thercafter sent Ex. W10 Lawyer's notice on 15-4-1993 to the Chairman, Syndicate Bank, Manipal requesting to reinstate her into service as her services were terminated due to Vindictiveness though her work was satisfactory. She was given Ex. W11 reply dated 15-5-1993 denying the allegations made in the notice and informing her that her performance was found unsatisfactory during the period of probation and hence her services were terminated and advising her from taking further action. The same was received by the petitioner. However she sent another legal notice Ex. W12 dated 9-9-1993 to the Chairman and Managing Director, Syndicate Bank Head Office, Manipal which was received by him under Ex. W13 acknowledgement. But no reply was sent for the same. The petitioner thereafter approached the Asst. Labour Commissioner, Vijayawada raising the dispute before him. He could not settle the matter and hence Ex. W17 failure report dated 28-2-1994 was sent to the Government of India, Ministry of Labour. Thereafter the petitioner sent letters Ex. W14 dated 7-7-1994 to the Government of India, Ministry of Labour requesting the Government to refer the dispute to this Tribunal. The Government however refused to refer the same on the ground of delay. The petitioner made 2 more representations Ex. W15 dt. 9-8-97 and W16 dt. 12-9-97 requesting the Government to refer the dispute to this Tribunal. Acting on the above representations, the Government of India by its letter Dt. 16-1-98 referred the dispute raised by the petitioner to this Tribunal.

11. The petitioner was also said to have sent the representations repeatedly to the concerned authorities, before sending Ex. W10 lawyer's notice in the year 1993. Ex. W18 to 33 are the copies of the representations on various dates as mentioned in the Appendix of evidence. But according to the respondent as revealed from the evidence of MW1, the management received only Ex. W30 representation dt. 24-7-93, Ex. W31 dt. 5-6-93 and W33 dt. 14-8-93. But there is a controversy as to whether the petitioner has sent other representations marked as Exs. W18 to W29 and W31; Ex. W34 is the circular dt. 26-4-74 issued by the Managing Director to all the Branch Managers instructing them that whenever a probationer is not coming upto the expectations of his superiors, either in his conduct or in the discharge of his/her duties and functions, he/she must be advised orally or in writing pointing out the deficiencies of their performance and send a report about their performance in appraisal form to head office for consideration of their case for confirmation.According to the petitioner this circular is violated in her case.

12. It is also admitted fact that one Miss. Shakunthala S. Nayak was appointed as clerk on probation at Panaji Branch of the respondent Bank vide appointment Bank vide appointment order dt. 25-4-1971 and she joined in duty on 31-5-1971. Her services were also terminated after expiry of extended period of 3 months. She approached the Central Government Industrial Tribunal for reinstatment on the ground that termination of her service is illegal for non-compliance of Section 25 F of the I.D. Act. Her dispute was taken on file vide reference No. CGII-4 of 1996 and the same was answered in her favour vide Ex. W35 award dt. 7-7-87 by holding that the termination of her service is illegal and directing her reinstatement with 50% back wages because of the delay of 12½ years in raising the dispute. According to the petitioner, her case is similar to the case of Miss Shakunthala, as such she is entitled for reinstatement.

13. Having set out the admitted facts, I shall now consider the contentions of both parties. It is the case of the petitioner examined as WW1 that she has worked as Probationary Clerk from 4-9-1973 to 11-6-1974 i.e. for period of 9 months i.e. more than 240 days to the satisfaction of her superiors but by way of vindictiveness, her services have been terminated with effect from 11-6-1974 without assigning any reasons and without following the mandatory provisions of section 25 of the I.D. Act that is to say by not paying the retrenchment allowance though she was given one month's pay in lieu of one month's notice and as such Ex. W9 order dt. 30-5-1974 terminating her service amounts to illegal retrenchment within the meaning of section 2 (OO) of the I.D. Act. Hence she is entitled for reinstatement. She has further contention that Ex. W34 circular was not followed by the Management in respect of probationers. Hence for that reasons also she is entitled for reinstatement and further one Miss. Shakunthala a probationery Clerk whose services have been terminated in the similar circumstances, was ordered to be reinstated by the Central Government Industrial Tribunal, Bombay Under Ex. W35 order in identical circumstances, as such the management is not justified in terminating her service with effect from 11-6-1974 without assigning any reasons and it is a case of vindictiveness.

14. The contention of the respondent on the other hand is that the performance of the petitioner during the initial period of probation was not satisfactory and hence the same was extended by 3 more months under Ex. M3 order for improvement in her work. But she did not show any improvement in her performance even in the extended period of probation inspite of giving Exs. M1 to M3 advisory memos to rise to the expectation of the Management and hence as provided under clause 8 of Ex M5 terms and conditions of appointment order, her services have been dispensed with as it provides for termination of service without assigning any reasons, as such it is not a case of retrenchment but disengagement due to the unsatisfactory performance during the probation period as covered by Section 2(bb) and Section 2(oo) of the I.D. Act and there is no vindictiveness.

15. Thus according to the respondent, the petitioner was not confirmed because of Exs. M1 to M3 Memos given to the petitioner and Exs. M6 and M7 appraisal reports with regard to the performance of the petitioner and there is no violation of Ex.W34 circular. It is further case of the respondent that Ex. M35 order is not relevant to the facts of the case as it is the case of termination of service of Clerk after completion of the probationary period while the instant case is case of termination of service of the petitioner during the period of her probation.

16. It is the further case of the respondent that the reference itself is bad because there is abnormal delay on the part of the petitioner in raising the dispute that is to say though her services were terminated as early as in the year 1974 she has raised the dispute in the year 1993, pursuant to Ex. W10 lawyer's notice for which Ex. W11 reply was promptly given by the management and further the Government itself refused to refer the dispute earlier on the ground of delay. According to it the petitioner has not sent any other representations though it has received Exs. W30, 31 and 33 representations besides Ex. W10 and W12 lawyer's notices before seeking again for reference to this Tribunal.

17. In view of the above contentions, the following sub-points arise for consideration:

1. Whether the termination of service of the petitioner amounts to retrenchment within the meaning of Section 2(oo) of the I.D. Act if so the same is void due to non-compliance of Section 25F of I.D. Act?

2. Whether the reference is not maintainable due to latches or delay on the part of the petitioner in raising the dispute?

18. Coming to the first point, there can be no doubt that the petitioner worked for 9 months, as initial period of probation is for a period of 6 months and as the same was extended by 3 months under Ex. M3 order dated 4-3-1974. Thus she worked for continuation period of 240 days in a calendar year preceding the date of her termination, as such shall be deemed to be in continuous service for one year within the meaning of Section 25(B)2 and (11) of I. D. Act. There can be no doubt that if a person works for 240 days and his services were terminated without assigning any reason otherwise than as punishment inflicted by way of disciplinary action, it would amount to retrenchment if it is not covered by clause (a), (b) and (c) and clause (bb) inserted by way Amendment by Act No. 49 of 1984 with effect from 18-8-1984 undisputedly the petitioner's case is not attracted by the said clause (bb) as her services were terminated with effect from 11-6-1974 i.e. more than a decade before that amendment as rightly pointed out by the learned counsel as such the respondent can not take advantage of clause (bb) of Section 2(cc) of the I.D. Act. It is also undisputed fact that as per Section 25-F of the I.D. Act, no workmen employed in any industry who has been in continuous service for not less than one year shall be retrenched until one month's notice in writing indicating the reasons for retrenchment, has been given or the workman has been paid in lieu of such notice, and without paying the retrenchment compensation; Hence it is obvious that compliance of Section 25-F is condition precedent for retrenchment of a workman. It is not in dispute in this case, the WW1 was not given retrenchment compensation though one month's pay in lieu of notice was paid to her as borne out by Ex. W9 order.

19. As per the case law on point, the order of termination of service of a workman without complying with the provisions of Section 25-F would render the same ab initio void and in such a case the workman is entitled for reinstatement. As the case law is well settled it is suffice to refer the case of EMPLOYERS IN RELATION TO THE DIGWADIH COLLIERY VS. THEIR WORKMEN (Supreme Court Labour Judgments Part No. 8 Page No. 79) and also the case of L. ROBERT D'SOUZA VS. THE EXECUTIVE ENGINEER, SOUTHERN RAILWAY & ANOTHER (Supreme Court Labour Judgements Part No. 8 Page No. 97) and the case of NAROTAM CHOPRA VS. PRESIDING OFFICER, LABOUR COURT AND OTHERS (1989 Supp (2) Supreme Court Cases 97). There can also be no doubt that the service of a workman on probation can be terminated if his performance is not satisfactory and if it is provided in the rules and conditions of employment and if the action of the Management is not motivated.

20. Hence it has to be seen in view of position of law whether termination of the services of the petitioner in this case amounts to retrenchement dehors clause (bb) of Section 2 (oo) of I.D. Act as the said clause was admittedly inserted 10 years after the impugned order Ex. W9 was passed and the petitioner was relieved under Ex. M5 order dt. 11-6-1974.

21. The evidence of petitioner would no doubt show that she has been discharging her duties to the best of her ability and to the satisfaction of her superior officers both during the initial probation period and extended period of probation having been appointed under Ex.W5 order on probation for 6 months that without assigning any reasons, her services were terminated from 11-6-1974 having been appointed on 4-9-1973. Her evidence further showed that she was originally posted in the main Branch but at the time of termination she was working at Buckinghampet Branch of respondent-Bank and that there are no adverse remarks against her in any of the branches that no charge sheet was served on her and no enquiry was held before terminating her service and she was not paid any retrenchment compensation though one month's pay was paid, as such she is entitled for reinstatement as the respondent failed to do so inspite of issuing lawyer's notices and raising dispute before the Assistant Labour Commissioner (Central) Vijayawada.

22. The evidence of MW1 on the other hand would show that while WW1 was working at main branch, her services were found to be not satisfactory and number of mistakes are committed by her and the same were pointed out to her under Exs. M1 & M2 advisory letters asking her to show better performance and to raise to their expectation but there was no improvement in her performance during initial probation period of 6 months and that hence her probation was extended for 3 more months under Ex. M3 order and she was transferred to Buckinghampet branch so that her work can be observed by another Manager. But there was no improvement in her performance even at Buckinghampet Branch though she was advised under Ex. M3 while extending probation period of 3 months to improve herself in her work to consider her services for confirmation. His evidence further showed that Buckinghampet Branch Manager also in Ex. M6 letter dt. 19-3-74 reported that the knowledge of the petitioner even in typing also is poor though she was entrusted with typing as advised by the Head Office and he recommended for her transfer to some other branch by enclosing Ex. M7 performance appraisal report. Hence the petitioner could not be confirmed and her services were terminated under Ex. W9 order with effect from 11-6-1974 and that the month mentioned at the top of Ex. M5 relieving order as 'May 11, 1974 is typographical mistake for the month of June 1974 he further stated that along with Ex. W5 appointment order Ex. M4 terms and conditions of appointment is enclosed sent to the petitioner and as per one of the terms of Ex. M4 the management can refuse to confirm the petitioner's service if her work is not satisfactory. His evidence thus shows that after observing and following procedure only, and for sufficient reasons the respondent expressed its inability to confirm the services of the petitioner after completion of probation i.e. initial and extended period which ended on 11-6-1974.

23. Though the petitioner sought to deny that she was given any advisory memos during the period of probation at main branch, but when confronted with Exs. M1 and M2 Memos, she admitted of having been served with them. But she choose to say that one week after joining, she was given the advisory letter by the Branch Manager to improve herself on the ground that her performance is far from satisfactory. She further admitted that being new to job, she committed some mistakes in writing addresses of customers and on the advice of the manager, she struck of the addresses and wrote it on another paper and thereafter she was issued Exs. M1 and M2 advisory letters pointing out her in numerable mistakes. During the course of cross-examination she also admitted that she was served with Ex. M3 letter dt. 4-3-74 extending her probation for 3 more months i.e. upto June 1974. A perusal of Ex. M3 would show that the petitioner has been informed in categorical terms that her case cannot be considered for confirmation unless she shows the desired improvement during the extended period of probation and to give her one more opportunity to improve herself, her probation was extended for 3 months from 12-3-1974. It has also been mentioned in Ex. M3 that on making a review of her performance during the period of her probation, it has been observed that her command of language, vocabulary and expression her handwriting,. knowledge of routine work procedure, her ability to shoulder extra load of work if required are poor and she is not showing any interest in learning the work. Similar observations were made in Ex. M1 and M2 advisory letters served on WW1.

24. Thus it is obvious that the contentions of the petitioner that though there are no adverse remarks against her and though she discharged her duties without any deficiency her service were terminated is far from truth. In view of Exs. M1 to M3 advisory memos served on her during the period of probation. It is of course true no memo similar to Ex. M1 to M3 appears to have been served on the petitioner during the extended period of probation of 3 months. Ex. M6 letter dt. 19-3-74 would however show that the concerned Manager sent confidential letter that her performance is poor, pursuant to Ex M34 circular, enclosing Ex. M7 performance appraisal and merit rating of probationary clerks. A perusal of Ex. M7 coupled with the evidence of MW1 would show that there is a system of appraising the performance of the probationary clerks that as against 10 parameters for which the petitioner was assessed on four counts her performance was observed as poor. Thus it would appear that services of the petitioner were terminated basing only on her performance during the initial period of probation as well extended period of probation though memo similar Exs. M1 to M3 are not served on the petitioner during the extended period of probation but only Ex. M6 report was sent by the Manager enclosing Ex. M7 appraisal report. I am of the view that simply because no memo was served on the petitioner during the extended period of probation, it cannot be said that her performance was good in the light of Ex. M6 and M7. Hence I am unable to agree with the contention of the petitioner that the management committed breach of Ex. M34 circular in this regard. I am of the view that there was no improvement in performance of the petitioner though she worked under two branch managers and inspite of giving opportunity to improve herself during the extended period of probation it cannot be said that management acted in a vindictive manner.

25. Further a perusal of Ex. M4 terms and conditions of appointment of probationery clerk which is enclosed to Ex. W5 order of appointment and which the petitioner had admittedly received as per her own showing, would show that as per clause 8 of the said condition, the management is at liberty to confirm the services of the probationary clerks and terminate the service of the probationer without assigning any reason at any time during probation by giving one month's notice or salary in lieu of notice. The respondent appears to have acted under this clause in issuing Ex. W9 order terminating the services of the petitioner after closing hours

of office on 11-6-1974 on which date the extended period of probation of 3 months will be over. I am of the view that though clause (bb) of section 2(oo) of the I.D. Act is not available to the respondent as the said provision was inserted 10 years after Ex. W9 order, the respondent is entitled to terminate the services of the petitioner at any time of probation by virtue of clause 8 of terms and conditions governing appointment of probationary clerks marked as Ex. M4. I am of the view it is a case of non-renewal of contract of employment i.e. discharging after expiry of probation period. I am of the view that no charge memo and no domestic enquiry need be held as the termination or discharge simplicitor as in the case, does not amount to punishment. Therefore I am of the view that termination of service of the petitioner in this case cannot be treated as retrenchment within the meaning of section 2(oo) in view of clause 8 of Ex. M4 terms and condition of appointment as per which the management is at liberty to terminate the services of the petitioner without assigning any reasons by giving one month's notice or pay in lieu of notice. I therefore feel that this is a case of discharge simplicitor as it is actuated by any motive and has no stigma attached to the petitioner as no adverse reasons are mentioned in Ex.W9 order of termination except saying that the management is unable to confirm her service.

26. Hence having regard to the facts and circumstances of the case, I feel that the respondent management is definitely entitled to refuse to confirm the services of the petitioner as she could not improve her performance though she has been given opportunity to raise to the expectations of the management during the extended period of probation for 3 months and transferred to another branch so that her performance could be watched and reported by another Manager. But inspite of giving such opportunity she could not improve herself. The fact that her period of probation was extended for 3 more months from the initial period of 6 months. Would itself go to show apart from Exs. M1 to M3 advisory letters, that her performance was not upto the mark, and in fact it is unsatisfactory.

27. I am of the view that Ex. W35 award of the Central Government Industrial Tribunal has no bearing to the facts of this case. It is a case of termination of service of a worker after completion of probation period. The facts of the said case would show that though probation of the worker expired on 28-2- 1972, she was served with termination order on 29-2-1972 by giving one month's notice pay as against three months' pay expected to be given in case of confirmed employee. The records placed before that Tribunal showed that the workman in that case has ceased to be a probationer at the end of 28-2-1972 and deemed to have been confirmed where her services were terminated at the end of working hours of 29-2-1972. Three months notice or payment of three months' pay in lieu of notice, is mandatory in such case. But the management gave one month's pay in lieu of notice and hence the termination was held to be not valid. Thus it is obvious that the facts in the said case are totally different from the fact of this case, as such it will not come to the rescue of the petitioner herein.

28. I am of the view that the action of the respondent in the instant case is in accordance with the case law on the point. As sufficient evidence is placed by the respondent on record as to what under circumstances the services of the petitioner could not be confirmed. The facts of the case of UNIT TRUST OF INDIA & ORS. vs. T. BIJAYA KUMAR & ANR [1993 (I) LLJ page 240] that the services of the petitioner were terminated at the end of extended period of probation of six months as his performance is not satisfactory. It has also been held in the above ruling that the termination of service in such case the end of probation period would only amount to discharge simplicitor, as such no opportunity of being heard need be given to the probationer before terminating of his/her service. It is further held in that case that there is no material on record to conclude that the impugned order smacks of bias or prejudice or is in any way malafide. In the case of M. VENUGOPAL vs. THE DIVISIONAL MANAGER, LIFE INSURANCE CORPORATION OF INDIA, MACHILIPATNAM, A.P. (AIR 1994 SC 1353) also it has been held that the termination of service of the petitioner is justified if he failed to achieve necessary target stipulated in contract of employment. It is of course true that the said cases were rendered after clause 2(bb) was inserted in the I.D. Act and the termination was affected thereafter as rightly pointed out by the petitioner. But it has been observed in the later ruling that even in the absence of sub-clause (bb) of I.D. Act even under general law the service of a probationer can be terminated after making over all assessment of his performance during the period of probation and no notice is required to be given before terminating his service. In the said decision, reference was made to earlier decision of Supreme Court in the case of THE GOVERNING COUNCIL OF KIDWAI MEMORIAL INSTITUTE OF TECHNOLOGY BANGALORE vs. DR. PANDURANG GODWALKAR (AIR 1993 SC page 392) wherein it has been observed that if the performance of the employee concerned during the period of probation is not found to be satisfactory on overall assessment, then it is open to the competent authority to terminate his service. To similar effect are the decisions in the case of BUSCHING SCHMITZ (P) LTD. vs. SHIV DUTT SHARMA & ANR. (1997 LLR 355) and in the case of M/S. OSWAL PRESSURE DIE CASTING INDUSTRY, FARIDABAD vs. PRESIDING OFFICER AND ANOTHER [1998 (78) FLR page 1009]. It has been held in the later decision that once it was found that the assessment made by the employer was supported by some material and was not mala fide it was not proper for the High Court to interfere and substitute its satisfaction with the satisfaction of the employer and that employer can terminate the services of a probationer at the end of the probation with the remark 'not found fit to confirm' and evidence of his

unsatisfactory work also adduced, the High Court cannot sit in appeal over assessment made employer on performance of employee. The Apex Court thus upheld the order of termination. It is of course true that the above decisions are also in respect of termination of service of probationers after clause (bb) was inserted. I am however of the view that the principles of law laid down in the above authorities squarely applies to the facts of this case as the service of the petitioner was terminated as per clause 8 of this and condition of appointing probationery clerk enclosed to Ex. W5 appointment order issued to WW1 and as sufficient evidence is placed on record in the shape of Exs. M1 to M3 besides Exs. M6 and M7 as to why her service could not be confirmed. Admittedly the petitioner was served with Exs. M1 to M3 memos during the initial period of 6 months probation pointing out the deficiencies in her work and advising her to improve herself during the extended period of probation. But it appears that there is no improvement in her work though she was transferred to some other branch as the said Manager also sent. Ex. M6 confidential report as required under Ex. W34 circular, about the poor performance of the petitioner even during the extended period of probation. I am also of the view that there is nothing in the evidence of the petitioner to show that the management has acted in a biased manner except alleging vindictiveness in the claim petition. The petitioner did not say as to why the management is vindictive towards her. In the absence of such evidence I find no reason for the Manager to act in malafide manner or vindictive manner against the petitioner in not confirming her service after extended period of probation.

29. Hence on the appraisal of the material placed on record I conclude that the termination of the service of the petitioner would not amount to 'retrenchment' within the meaning section 2(00) of the I.D. Act and hence the question of non-compliance of Section 25-F of the I D. Act does not arise and no retrenchment allowance need be paid to her and as such Ex.W9 order cannot be said to have been passed arbitrarily and in an illegal manner. I hold Ex. W9 order is not valid this point is hence answered against the petitioner.

30. This will take us to the next question whether the reference is not maintainable due to abnormal delay in raising the dispute. It is the contention of the respondent that though the services of the petitioner were terminated as early as on 11-6-1974, she has not raised the dispute for 20 years i.e. till Ex. W10 notice dt. 15-4-1993 was issued for which Ex. W11 reply was given promptly and that the Government also originally refused to refer the dispute because of the abnormal delay but for the reasons best known to it, it has however referred the dispute later. The respondent thus submitted that the claim of the petitioner for reinstatement has become stale and as such she is not entitled to the relief of reinstatement and other attendant benefits.

31. The learned council for the petitioner however repelled the above contention by submitting that no period of limitation is prescribed in the I.D. Act for the reference to be made by the Government to the Industrial Tribunal and as such the reference is maintainable. It is submitted that as per Section 12 of I D. Act a dispute can be referred at any time if any industrial dispute exists or apprehends and as per section 10 of I. D. Act also the appropriate Government can make reference for adjudication if it is of opinion that any dispute is apprehended or existed at any time by order in writing. It is thus submitted that as no period of limitation is prescribed, there is no bar for maintaining this reference. It is further submitted by the petitioner that there is no delay at all or latches on the part of the petitioner in raising the dispute as she has been sending representations under Exs W'8 to W33 before issuing Ex. W10 lawyer's notice It is submitted further that even it is assumed that the petitioner has not raised any dispute for about 20 years that is to say till she issued Ex. W10 notice, it cannot be a ground to refuse the relief of reinstatement but the Tribunal could mould the relief in proper manner i.e. by refusing to award back wages or by awarding 50% of the wages, or by observing that the workman is not entitled to continuity of service because of latches on his part in raising the dispute He thus contended that the objection of the respondent for maintainence of the reference and granting the relief to the petitioner is untenable In support of the above contention the learned counsel for the petitioner placed reliance on the following decisions -

1. 1986 (I) LLJ page 405 — THE MANAGEMENT OF NEEDLE INDUSTRY vs. THE PRESIDING OFFICER, LABOUR COURT, COIMBATORE

2. 1988 (I) ALT page 99 -- HINDUSTAN ZINC LTD. vs. REVENUE DIVISIONAL OFFICER, VISAKHAPATNAM & OTHERS.

3. 1989 (I) ALT page 607 - - INDIAN AIRLINES vs. PHILIPS

4. 1994 (II) ALT page 575 --- M.M. BAIG vs A.P. STATE ROAD TRANSPORT CORPORATION REP. BY ITS MANAGING DIRECTOR AND ANOTHER.

In all the above decisions, it has been held that the delay is not sufficient to deny the relief if the order of the termination is held to be illegal for not following provisions of Section 25 F of the I.D. Act. The delay in the above cases is ranging from 4 to 18 years.

32. The learned counsel for the respondent however relied on the decision of DEHRI ROHTAS LIGHT RAILWAY CO. vs. DISTRICT BOARD, BHOJPUR [1992-(II) SSC 598]. In support of its contention that claim became stale. Hence petitioner is not entitled to any relief.

33. The petitioner has no doubt stated that immediately after receipt of the order of termination, she has been giving the representation to the authorities for reinstatement into services before issuing the lawyer's notice in the year 1993 and thus no lapses on her part. She marked Exs. W18 to W33 representations which are of the year 1974 to 1993. There is no dispute that she has issued Ex. W10 lawyer's notice dt. 15-4-1993 followed by Ex. W12 notice dt. 9-9-93 in continuation of Ex. W11 reply given by the respondent. M.W.1 stated that they have received Ex. W30, 31 and 33 besides Exs. W10 and W12 notices and dispute raised by the petitioner for the first time in the year 1993.

34. It is however contended by the learned counsel for the petitioner that as there is no specific denial in Ex. W11 reply about non-receipt of various representations mentioned in Ex. W10, it has to be deemed that the respondent has admitted the receipt of the said representations. I find no merit in the contention; simply because the general denial was made in the reply but no specific denial was made for each representation said to have been sent by the petitioner and referred in the notice. It cannot be said that there was no denial or that the respondent admitted the said averment. No proof is placed on record by the petitioner to show that she has in fact sent Exs. W1 to W29 and W32 representation on various dates as she has not filed any postal receipts for sending the same through registered post or acknowledgements in token of having received the same by the respondent. In the absence of such evidence, it is difficult to believe that the petitioner sent Exs. W18 to W29 and W32 representation on different dates. Simply because the paper used for the above representations appears to be old it cannot be said that the petitioner has made representation on the dates mentioned there in. If these documents are taken out of consideration, then we are left with only Ex. W10 notice which was issued in the year 1993. Thus it is obvious that for the first time in the year 1993 after lapse of 19 years she raised the dispute with regard to her termination. This view of mine finds support and strengthened by the statement given by the petitioner in her cross examination that in view of recent decision of Supreme Court that there is no period of limitation for raising Industrial dispute she raised the dispute for the 1st time before the Asst. Labour Commissioner only in the year 1993 after lapse of 20 years and that earlier the Government of India refused to refer the dispute on the ground of delay she made categorical admission to the above effect it would disprove Ex. W18 to 29 & 32. At the fagend of the further cross examination she admitted in clear terms basing on the decision of Supreme Court only she raised this dispute after long lapse of time. Coming to know of the fact that the delay can not be ground for refusing the relief of reinstatement. Thus it is obvious from her own admission that for the first time she has raised the dispute after lapse of 20 years under Ex. W11 notice and so called representations which are marked Exs. W18 to W29 and W32 are bought into existence to show that there was no delay on her part in raising the dispute.

35. Of course it is true that as per the provisions of the I.D. Act and decided authorities no period of limitation is fixed for raising the dispute. The facts of the case relief on by the learned counsel for the Petitioner would however show that there is delay in making reference by the Government but not on the part of the petitioner in raising the dispute. But the facts of the present case would show that the lapse or latches are on the part of the petitioner herself. The decisions relied by the learned counsel for the petitioner are of the various High Courts including Madras High Court while the decision relied on by the respondent is that of Apex Court. It is catergorically held in the decision relied on by the respondent that the claim of the petitioner for reinstatement after long lapse cannot be sustained. As it is well settled that the courts will not enquire into the belated stale claim as such enquiry may lead to unhealthy practice resulting in improper exercise of discretion. The rule which says that the court may not enquire the belated and stale claim is not a rule of law, but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental rights and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of latches or delay is denied is, that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay.

36. Thus as per the above decision the claim will become stale, if there is long delay on the part of the person seeking relief, unless the delay is properly explained. In the instant case there is no explanation by the petitioner for such a long delay in seeking for her reinstatement. Of course she sought to show through Exs. W18 to W33, there is no delay on her part in raising the dispute, as she has sent the representations to the authorities from time to time. But the same are held to be not believable.

37. In view of the decision relied by the learned counsel, I hold that the claim of the petitioner for reinstatement became stale in view of the subsequent event as number recruitment took place after termination of her from service as could be seen from the evidence placed on record. Hence I hold that though the reference is not bad due to delay as no period of limitation is prescribed the claim has become stale and the petitioner is not entitled for reinstatement for this reason also besides the fact it is not case of illegal retrenchment the point is answered accordingly.

38. Hence I conclude on consideration of various contentions of the parties and the material placed on record that there are no grounds to hold that the action of the management in terminating the services of the petitioner, St. S. Ramadevi, in question with effect from 11-6-1974 is not justified. The point is answered accordingly.

39. In the result, an award is passed holding that the petitioner is not entitled to relief of reinstatement as the action

of the respondent in terminating the services of the petitioner is legal, justified and for sufficient reason and not motivated or biased and as no stigma is attached in terminating her services.

Dictated to the steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, on this the 16th day of February, 1999.

C. V. RAGHAVAIAH, Industrial Tribunal-I

Appendix of evidence

Witness examined for petitioner	Witness examined for the respondent
WW1 : S. Rama Devi	MW1 : P. Panakala Rao

Docoments marked for the petitioner

EX. W 1 : Call letter dt. 28-8-71 issued to WW1 for writtern test.

EX. W 2 : Call letter dt. 4-11-71 issued to WW1 for viva voce test.

EX. W 3 : Letter dt. 30-12-1971 issued to WW1 regarding her selection and to undergo training.

EX. W 4 : Appointment order dt. 12-6-1973 appointing WW1 for under going training at Staff Training College, Gunfoundry, Hyderabad.

EX. W 5 : Appointment order dt. 4-9-1973 issued to WW1 appointing as Probationary Clerk after completion of her training.

EX. W 6 : Letter dt. 4-9-1973 issued to WW1 enclosing letter of appointment in Form 'S' under the provisions of shops and Establishments.

EX. W 7 : Form 'S' Letter of appointment enclosed to Ex. W6.

EX. W 8 : Transfer order dt. 11-1-74 issued to WW1 to report at Vijayawada Buckinghampet Branch.

EX. W 9 : Order dt. 30-5-74 relieving WW1 from the services of the Bank at the close of office hours on 11-6-1974.

EX. W 10 : Lawyer's notice dt. 15-4-1973 issued by WW1.

EX. W 11 : Reply dt. 15-5-1993 given by the Bank to Ex. W10 notice.

EX. W 12 : Lawyer's notice dt. 9-9-1973 issued by WW1.

EX. W 13 : Postal acknowledgement to Ex. W12.

EX. W 14 : Letter dt. 7-7-94 addressed by the petitioner to Govt. of India.

EX. W 15 : Letter dt. 9-8-97 addressed by the petitioner to Govt. of India.

EX. W 16 : Letter dt. 12-9-97 addressed by the petitioner to Govt. of India.

EX. W 17 : Failure report dt. 28-2-94 submitted by Asst. Labour Commissioner, Vijayawada.

EX. W 18 : Representation dt. 11-6-74 given by WW1 to the Head Office of Bank at Manipal.

EX. W 19 : Representation dt. 11-11-74 submitted by WW1 to Regl. Development Manager, Syndicate Bank, Hyderabad.

EX. W 20 : Representation dt. 4-12-74 addressed to Regl. Development Manager, Hyderabad.

EX. W 21 : Representation dt. 16-4-75 addressed to Regl. Development Manager, Hyderabad.

EX. W 22 : Representation dt. 1-5-76 addressed to the Head Office, Manipal.

EX. W 23 : Representation dt. 2-2-77 addressed to the Head Office, Manipal.

EX. W 24 : Representation dt. 3-3-78 addressed to the Head Office, Manipal.

EX. W 25 : Representation dt. 4-4-79 addressed to the Head Office, Manipal.

EX. W 26 : Representation dt. 5-5-87 addressed to the Head Officer, Manipal.

EX. W 27 : Representation dt. 6-1-89 addressed to the Head Officer, Manipal.

EX. W 28 : Representation dt. 7-2-90 addressed to the Head Officer, Manipal.

EX. W 29 : Representation dt. 2-3-91 addressed to the Head Officer, Manipal.

EX. W 30 : Representation dt. 24-7-93 addressed to the Head Officer, Manipal.

EX. W 31 : Representation dt. 5-6-93 addressed to the Head Office, Manipal.

EX. W 32 : Representation dt. 5-7-93 addressed to the Head Office, Manipal.

EX. W 33 : Representation dt. 14-8-93 addressed to the Head Office, Manipal.

EX. W 34 : Circular dt. 26-4-74 issued by the Managing Director of Syndicate Bank.

EX. W 35 : Award dt. 7-7-87 in reference No. CGIT-4 of 1986 on the file of Central Government Industrial Tribunal No. 1, Bombay.

Documents marked for the Respondent

EX. M1 : Advisory letter dt. 18-9-73 issued by Branch Manager of Vijayawada Main Branch, issued to WW1 to improve her performance.

EX. M2 : Advisory letter dt. 20-12-1973 issued by Branch Manager of Vijayawada Main Branch issued to WW1 to improve her performance.

EX. M3 : Letter dt. 5-3-1974 extending probation of WW1.

EX. M4 : Terms and conditions of appointment of WW1 dt 4-9-73.

EX. M5 : Relieving order dt. 11-5-74 issued to WW1

EX. M6 : Confidential letter dt. 19-3-74 sent by the Manager to the Head Office at Manipal.

EX M7 : Performance appraisal and merit rating of probationery statement pertaining to WW1.

नई दिल्ली, 19 मई, 1999

का. आ. 1688.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/117/95-आई आर (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S. O. 1688.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 19-5-1999.

[No. L-12012/117/95-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 11th May, 1999.

Present : JUSTICE R. RAMAKRISHNA
PRESIDING OFFICER

C. R. NO : 137/97

I PARTY	II PARTY
General Secretary Vijaya Bank Workers Org (Regd) 37/1, Car Street, Ulsoor, Bangalore – 560008	The Chairman and Managing Director Vijaya Bank H. O. M. G. Road, Bangalore-1

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/117/95-IR (B-II) dated 30-1-1996 on the following schedule :

SCHEDULE

"Whether the action of the management of Vijaya Bank, Bangalore in imposing the following penalities on Shri. G. M. R. Prabhu, Clerk is legal and justified? If not, what relief is the said workman entitled to? :—

(i) Censure;

(ii) Stoppage of one increment temporarily for six months; and

(iii) Recovery of 1/3rd share of Rs. 20,000/- with interest."

2. The first party was working as a Clerk at the relevant point of time in the second party at Kolar Branch. The charge sheet Ex-M-1 dated 31-3-1992, was issued to him which contains the allegations of failure to observe care/precaution in allowing some miscreants to encash cheque No. 933752 dated 7-6-1991 for Rs. 20,000/- in SB A/c No. 6466 for one Shri Appaiah. The second charge was the issue of cheques in favour of third party for various sums though there was no fund in his account to honour those cheques. Since the bank has incurred the loss of Rs. 20,000/- of the money belonging to their customer, the management having dis-satisfied with the explanations of the first party, the domestic enquiry was conducted by appointing the enquiry officer. The Enquiry Officer placing reliance on documents made available in the enquiry and also by appreciating the oral evidence of the witness has come to the conclusion that the first party is guilty of both charges, which are the misconduct under clause 19.5(J) of Chapter XIX of Bipartite Settlement. The disciplinary authority accepted the report. After giving an opportunity to the first party, ordered for stoppage of one increment permanently for the first charge and stoppage of one increment temporarily for a period of one year on charge No. 2.

3. When this workman filed an appeal the appellate authority has accepted the appeal and made some modification as it regards to the punishment. For charge No. 1 the punishment of Censure were awarded and for charge No. 2 stoppage of one increment temporarily for a period of 6 months was awarded.

4. When this being the position we are not able to understand how the schedule contains one more punishment i.e. recovery of 1/3rd share of Rs. 20,000/- with interest.

5. Since the punishment is on the basis of the report of domestic enquiry, a preliminary issue was framed to prove the

validity of domestic enquiry. The second party have examined enquiry officer as MW-1. In his evidence he has stated in detail the mode of enquiry he has adopted and how the first party has duly represented by the defence representative and participated with all seriousness and vigour. This witness was not cross-examined by the first party as the first party and his representative General Secretary were absent ever since this dispute was revived i.e. from 4-12-1998. The first party though received the notice of this tribunal has failed to make his appearnace to conclude this dispute.

6. Smt. Sarvamangala, the learned Advocate for the second party has submitted that the workman has failed to exercise due deligence in passing the cheque in question which was admittedly removed from the cheque leaf maintained in the bank and first party has not insisted for production of the pass book when the cheque was presented by miscreants with some defects. The first party being an employee of the bank is not exercised due diligence while issuing the cheques in favour of the third parties and allow those cheques to dishonour for want of funds.

7. Having regards to these facts and circumstances, and the first party is not evincing any interest in defending his case, the following order is inevitable :

ORDER

The second party are justified in awarding the punishment stated in the schedule for the proved misconduct committed by the first party. Reference answered accordingly.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 11-5-1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 मई, 1999

का. आ. 1689.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 प्राप्त हुआ था।

[सं. एल-12012/133/96-आईआर (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1689.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/133/96-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 19 of 1997

Parties: Employers in relation to the Management of Allahabad Bank

AND

Their Workmen.

Present :

Mr. Justice A. K. Chakrabvarty

... . Presiding Officer.

Appearance:

On behalf of Management — Mr. B.P. Ghosh, Law retainer

On behalf of Workmen — Mr. M. Chakraborty, Joint Secy.

State: West Bengal. Industry: Bank

AWARD

By order No. L-12012/133/96/IR(B-II) dated 20th May, 1997 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether there can be an inequality or different treatment amongst the employees of the same organisation? If not, how far the reversion of Shri Jaydeb Majhi done by the management of Allababad Bank, Regional Office, Hooghly is justified and what relief the concerned workman is entitled to?"

2. Union's case, in short, is that concerned workman Jaydeb Majhi joined erstwhile United Industrial Bank Ltd. as P.C.F. 19-8-85. UIBL merged with Allabadad Bank on 31-10-89. Sri Jaydeb Majhi passed Madhyamik Examination in the year 1977 and Higher Secondary Examination in the year 1979. Sri Majhi disclosed his qualification to the management of Allahabad bank as per memorandum of settlement dated 13-3-1993 for the first time on 19-5-93 and that was accepted by the management, though promotion was restricted for period 3 years from the date of imposition of punishment for suppression of qualification at the time of joining the service,

another subsequent memorandum of settlement dated 23-6-95 lessened the period of disqualification for promotion from 3 years to 1 year. On 19-4-95 union came to know that the concerned workman was going to be reverted to substaff cadre from clerical cadre. Union raised an Industrial dispute but the matter being not resolved at the conciliation, it was referred to the Tribunal by the Central Govt. for adjudication by way of reference. The union has prayed for setting aside the order of reversion of Sri Jaydeb Majhi.

3. Management of the Allahabad Bank filed a written statement alleging, interalia, that Sri Majhi disclosed his suppressed qualification as per bank's circular No. 3349 dated 30-4-93. In his application for promotion dated 16-10-93, he declared that he shall neither be debarred nor considered for reversion to subordinate cadre in terms of memorandum of settlement dated 22-4-89. The Bank has further alleged that promotion of Sri Majhi was effected inadvertently on account of incorrect declaration of qualification by Sri Majhi. Thereafter, on getting clarification he was directed to join as substaff on reversion to his original place of posting. The Bank has accordingly alleged that Sri Majhi was not eligible for promotion for a period of 3 years from 2-8-90 that is the date of imposition of punishment upon him. The Bank also alleged that any benefit given to any employee erroneously/ inadvertently shall not vest with such employee any right to any post and as the bank has every right to rectify such error. The bank has also alleged that it has acted properly in reverting Sri Majhi in the aforesaid circumstances. The bank has accordingly prayed for dismissal the case of the union.

4. Heard Mr. B. P. Ghosh, Law Retainer appearing for the management and Mr. Chakraborty, representative of the union.

5. Both sides have produced certain documents and one witness was examined on each side.

6. The facts are not in dispute in this case. Admittedly, the concerned workman Jaydeb Majhi was appointed as peon-cum-farash in the subordinate cadre in the erstwhile United Industrial Bank Ltd. suppressing his qualification that he has passed higher secondary examination. Presumably it was done for procuring the service of peon-cum-farash as be was over qualified for the post. Thereafter, a bi-partite settlement was arrived at between the management and union, where an opportunity was given to the employees for disclosing their suppressed qualification within 31st March, 1993 (vide Ext. W-1). In terms of that settlement, management of Allahabad Bank issued a circular directing the employees to disclose their suppressed qualification indicating clearly therein that those employees shall be debarred from promotion etc. for a period of 3 years from the date of imposition of punishment on him. The concerned workmen, accordingly disclosed his suppressed qualification on 19-5-93 (vide Ext. M-2).The Management admittedly imposed punishment on him on 2-8-93. It is also an admitted fact that before the expiry of 3 years after the order of punishment was effected the concerned workmen was granted one promotional posting as clerk on ad-hoc basis on 6-3-95. After such promotion he was allowed to participate in the Rural Banking Development Programme (vide Ext. W-7). He was also allowed to appear in the Aptitude test for data entry/computer operators (vide Ext. W-8), and from Ext.W-8A it will appear that he actually appeared in the said test. The management by its letter dated 21-4-95 (vide Ext. M-4) reverted the concerned workman to his previous post in subordinate cadre and directed him to report for duty at Mollerber Gumadangha Branch as peon-cum-farash. Industrial Dispute was raised over such reversion and the AIC (C) by his order prevented the management from giving effect to that reversion order.

7. The point for consideration in this case accordingly will be whether the management of Allahabad Bank was justified in the aforesaid circumstances to pass the order of reversion on 21-4-95 upon the concerned workman? It is submittd on behalf of the union that the management having granted the concerned workmen ad-hoc promotion once with full knowledge that the prohibition period was not over and there after burdening him with higher responsibilities must be deemed to have relaxed the terms of settlement of 1993 regarding bar on promotion.

8. Representative of the management, on the other hand submitted that there was no question of the management relaxing any terms of settlement duly arrived at between management and the union and that the promotion offered to the concerned workman was a sheer mistake and that error may rectified at the first opportunity whenever it was brought to its notice. It was further submitted that since the hands of the management were tied by the order of AIC (C) to maintain the status quo it was compelled to offer him opportunities consequent upon the maintenance of such status quo position.

9. Since the terms of settlement duly arrived at between the management and the union is binding upon them under Sec. 18(1) of the Industrial Disputes Act, 1947, neither of the parties to it was entitled under of the law to violate any terms of settlement. That being so, grant of promotion to the concerned workman from subordinate cadre to clerical cadre within 3 years of the prohibited period was illegal and the workman cannot claim any right to promotion on the basis of an illegal order. The workman also admitted that his promotion was on an ad-hoc basis. The Bank's letter of promotion clearly indicated that the Bank reserved the right of reverting him to his previous post from clerical cadre in case his selection was found to have been made erroneously or for other reasons. The workman in his evidence admitted that he knew about the discomfiture but his grievance is that the bank cannot take back what it had offered. Such grievance cannot have any basis whatsoever because, as I have shown above this order of promotion itself being without any legal basis must be deemed to be nonest. the management therefore only restored the proper position by cancelling the illegal order by reverting him to his previous position in a subordinate cadre as peon-cum-farash.

10. It was also submitted on behalf of the workman that he is likely to suffer seriously in social position and his prestige shall be seriously affected if the reversion order is implemented. The concerned workman himself is to blame for the same as he himself created such a situation by challenging lawful order of the management in this matter.

11. So upon careful consideration of facts and circumstances of the case as well as the evidence and position of law in this matter, I am to hold that the management was justified the reverting the concerned workman to subordinate cadre from clerical cadre. There being no evidence of in-equality or different treatment amongst the employees of the same organisation, no decision on that point is called for in this reference. Reversion of Sri Jaydeb Mahji, however, being legal and proper the concerned workman shall be not entitled to any relief in this case.

This is my award.

Dated, Calcutta the 3rd May, 1999.

A.K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 19 मई, 1999

का०आ० 1690.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं० एल-12012/134/94-आईआर (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1690. — In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/134/94-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE.

Dated : 11th May, 1999.

PRESENT : JUSTICE R. RAMAKRISHNA

PRESIDING OFFICER

C.R. No. 63/1994

I PARTY		II PARTY
Shri Vishnu G. Habib		The Deputy General Manager,
C/o. Vasanth Byahatti		Syndicate Bank
Vittal Pet,	V/s.	Zonal Office
Chennapeth		Mangalore-575 003
Hubli-580 024		

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/134/94-IR (B-II) dated 2/5-8-1994 on the following schedule :

SCHEDULE

"Whether the action of the management of Syndicate Bank, Hubli in dismissing Shri Vishnu G. Habib, Attender from service w.e.f. 27-2-1993 is justified ? If not, what relief is the said workman entitled to?"

2. The first party was dismissed from service for a proved misconduct contained in the charge sheet Ex-M-2 dated 9-8-1994. At the relevant point of time the first party was working as an Attender. He was entrusted with the duty of collecting proceeds of 33 postal orders received from two Educational Institutions. The first party having realised cash on these postal orders has not remitted the same either on that day or next day. Though the postal order handed over to him on 10-5-1991 he has re-imbursed the amount only on 18-5-1991 after it was brought to his notice by the Bank Manager.

3. The workman has not filed any reply to the charge sheet on the pretext that he is not able to understand English, though the management brought to his notice that he had declared of knowing English in his application and also in day to day proceedings he was conversant with the said language.

4. Thereafter the enquiry was commenced by examining the witness. The first party has participated throughout the enquiry.

5. The enquiry officer gave a finding against him for having proved misconduct alleged in the charge sheet. The disciplinary authority has issued a second show cause notice of the proposed punishment. The plea of guilt and for a lenient view made by the first party was not considered and he has been dismissed from services. The appeal filed by him was also dismissed.

6. The first party questioned the validity of domestic enquiry in his claim statement. The second party justified the mode of enquiry conducted by the enquiry officer. We have framed a preliminary issue on this point and recorded the evidence of the enquiry officer as MW-1. The first party has not appeared in the case and a notice issued to him by RPAD returned with Sharah "party has left the place". Another notice was duty served to the learned Advocate who was representing the first party. Though the notice was served the leaned Advocate has not appeared before this tribunal.

7. In view of these circumstances the second party was directed to justify the action taken by them.

8. Smt. Sarvamangala, the learned Advocate for the second party submits though it can be construed as a temporary mis-appropriation as alleged by the first party, his

case cannot be viewed in a different manner, other than the punishment prescribed for mis-appropriation. The question whether it was a temporary or permanent mis-appropriation is not so much relevant as the misconduct falls under clause 25. 1 (J) of the bipartate Settlement.

9. As I have said earlier the first party or his advocate have not appeared to present their case other than what is made out by the second party.

10. The law is well settled that the temporary mis-appropriation is equally grave than permanent mis-appropriation. Since the first party failed to represent and plead any mitigating circumstances, as it relates to quantum of punishment, without any reservation we have to accept the case of the second party.

11. Having regards to these facts and circumstances I make the following order :

ORDER

The Management of Syndicate Bank, Hubli are justified in dismissing the services of the first party Shri. Vishnu G. Habib for the proved misconduct. Reference answered accordingly.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 11-5-1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1691.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/174/93-आई.आर. (बी.-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1691.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarah as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/174/93-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

Before Shri B.L. Jatav, Presiding Officer the Central Govt., Industrial Tribunal-cum-Labour Court, Chandigarah.

Case No. I.D. 14 of 1994.

Sh. Ashok Kumar Bakshi
Zonal Secretary
Punjab National Bank Employees Union
Nawlti Road, Ambala City (Haryana)
.....Petitioner

Vs.

Regional Manager,
Panjab National Bank, Regional Office,
Sector-17, Chandigarh
.....Respondent.

REPRESENTATIVES:

For the workman : None.

For the management : Shri Rejesh Kalia

AWARD

(Passed on 6th April, 1999)

The Central Govt. Ministry of Labour vide Notification No. L-12012/174//93-I.R. (B.2) dated 17th January, 1994 has referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Punjab National Bank in imposing the punishment of stoppage of two increments with cumulative effect on Sri Devi Chand Goyal, Peon is legal and justified ? If not, to what relief, the workman is entitled to ?"

2. Today the case was fixed for evidence of the workman. Despite several notices none has put up appearance on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above situation, since the workman is not putting appearance, the present referece is returned for want of prosecution. Appropriate Govt. be informed.

Chandigarah.

6-4-1999 B. L JATAV, Presiding Officer

नई दिल्ली, 19 मई, 1999

का. आ. 1692.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/189/92-आई.आर. (बी.-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1692.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Bank of Maharashtra and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/189/92-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT BANGALORE

Dated, 7th May, 1999.

PRESENT : JUSTICE R. RAMAKRISHNA

PRESIDING OFFICER

C.R. NO. 74/1992

I PARTY	II PARTY
The General Secretary Hubli-Dharwad Bank Employees Association, S.B.M. Employees Union, S.B.M. Zonal Office, Lamington Road, HUBLI-560 020.	The General Managaer, Bank of Maharashtra, Southern Zonal Office, 15, Police Station Road Basavangudi, BANGALORE-560 004

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/189/92-IR(B.II) dated September 1992 for adjudication on the following schedule.

SCHEDULE

"Whether the claim of Hubli Dharwad Bank Emp. Asson. that Sh. N.H. Dharamdas is sweeping, cleaning, dusting, etc. a total area of 750 sq. ft. and is working for about 1 hour and 45 mts. a day and is, therefore, entitled for 1/3rd scale wages as per provisions of Bipartite Settlement, is justified ? If so, what relief the workman is entitled to ?"

2. Both parties expressed their willingness to compromise between themselves to maintain a cordial relationship. The court permitted them to effect compromise, consequent to this direction a compromise petitions filed, signed by the parties and their learned representatives.

The Compromise reads as follows :

(1) The case of Shri N.H Dharamdas, presently working as a sub-staff at Hubli Branch, was espoused by Hubli-Dharwad Bank Employees' Association. The said case is pending before this Hon'ble Tribunal.

(2) It is submitted that an Application dt. 6th January 1997, the Hubli-Dharwad Emp. Association has authorised Shri B.V. Dharwadkar Member of Executive Committee, Bank of Maharashtra Employees' Union, Mumbai to represent and conduct the case before this Hon'ble Tribunal. Shri B. V. Dharwadkar has filed an authority letter dt. 14-1-1997, which is on the record of this Hon'ble Tribunal.

(3) It is submitted that on account of mutual understanding between the I Party (the said Union) and the II Party (Management of Bank of Maharashtra) it is decided not to persue the Industrial Dispute pending before this Hon'ble Tribunal.

(4) The I Party, (the Union) therefore, does not want to proceed with the instant litigation and hence, requested this Hon'ble Tribunal to allow to withdraw the Application pending before this Tribunal. It is hence submitted that the matter may be settled as "**CLOSED**".

(5) The II Party (the Bank) also concedes to the above proposition of the I Party (the union) and hence confirms hereby that there is **NO** objection to the withdrawl of this instant dispute pending before this Hon'ble Tribunal.

To the effect as jointly decided and proposed as above, the parties to this instant dispute hereby put their signatures as under ?

3. In view of the above the reference is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 7th May, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1693.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/190/88डी.-(II)(A)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1693.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/190/88-D-II (A)]

SANATAN, Desk Officer

ANNEXURE

Before Shri B.L. Jatav, Presiding Officer, Central Govt., Industrial Tribunal-cum-Labour Court, Chandigarh.

Case No. I.D. 6 of 1989.

Sh. Rajender Singh
Vice Chairman
Bharatiya Vijaya Bank
Workers Organisation
C/o Vijaya Bank, 74-D,
Reegal Building,
New Delhi-110001.

.....Petitioner

Vs.

Divisional Manager
Vijaya Bank,
Shop cum-Office
173-174, Sector 17-C,
Chandigarh-160017.

.....Respondent

APPEARANCE:

For the workman : None.
For the Management : Shri Gopal Mahajan.

AWARD

(Passed on 19th March, 1999).

The Central Govt. Ministry of Labour vide Notification No. L-12012/190/88-D.II(A) dated 30th December 1988 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Vijaya Bank in transfering Sh. Pawan Kumar Vij, Clerk from Rohtak branch to their Faridabad branch in violation of the provisions of Sastri Award is justified ? If not, to what relief the workman concerned is entitled ?"

2. Despite several notices none has put up appearance on behalf of the workman. The representative of the workman discloses that as workman has been promoted as special assistant and posted at Gurgoan branch, so present reference become infructuous. In view of the above situation, the reference is returned to the Appropriate Govt. as infructuous

Chandigarah.
19-3-1999 B. L. JATAV, Presiding Officer

नई दिल्ली, 19 मई, 1999

का. आ. 1694.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक, अधिकरण/ चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं० एल-12012/234/94-IR(B-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1694.—In pursuance of Section 17 of the Industrial Dispute Act, 1974 (14 of 1974), the Central Government hereby publishes the award of the Industrial Tribunal, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/234/94-IR(B-II]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU CHENNAI

Tuesday, the 15th day of December 1998

Present :—

Thiru S. Ashok Kumar, M. Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 210 of 1994

(In the matter of the dispute for adjudication under Section 10(1) (d) of the I.D. Act., 1947 between the Workman and the Management of Indian Bank; Madras).

Between

The workman represented by
The General Secretary,
Indian bank Employees Union,
25 II Line Beach,
Madras-1.

AND

The General Manager,
Indian Bank H. O.,
31, Rajaji salai,
Madras-1.

REFERENCE : Order No L-12012/234/94-IR(B-II), Ministry of Labour, dated 14th December 1994, Govt. of India, New Delhi.

This dispute coming on for final hearing on Friday, the 30th day of October 1998, upon perusing the reference, claim, counter statements and all other matterial papers on record, upon hearing the arguments of Tvl. Row & Reddy, S. Vaidyanathan & K. Indra, Advocates appearing for the petitioner-union and of Tvl. Aiyar & Dolia, R. Arumugam, & B. haribabu, Advocates appearing for the respondent, and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This reference has been made for adjudication of the following issue :

"Whether the demand of the Indian bank Employees' Union Madras, on the management of Indian bank, Madras for regularising the services of Smt. V. Chitra, part-time Sweeper is justified? If so, to what relief is the said workman entitled to?"

2. The main averments found are in the claim statement filed by the petitioner-upon are as follows :

Smt. V. Chitra is working as a temporary part-time Sweeper in the respondent's bank at madurai Town Hall Road Branch, since January 1990. The petitioners was engaged in the leave vacancies of a permanant part-time Sweeper Smt. Rukmani Ammal, who subsequently retired on 20-6-93. When Smt. Chitra came to know about the retirement of Rukmani Ammal and the management's proposal to fill up the vacancy by calling for candidates from the Employment Exchange, she sent a reprsentation dated 10-3-93 requesting the bank to appoint her in the permanent vacancy that was to arise as a result of Rukmani Ammal's retirement on 30-6-93. She did not receive any reply. The Petitioner union by its letter dated 15-3-93 raised a dispute before the Assistant Labour Commissioner (Central) seeking regularisation of the services of Smt. V. Chitra. The management by its reply dated 22-6-93 took a stand that as per the existing policy, part-time sweepers are selected through Employment Exchange subject to their fulfilling eligibility criteria and that pursuant to this they had also obtained a list of candidates from the employment exchange and the process of selection was also started. The respondent's further contention was that she was never engaged in a permanent vacancy and in continous service They also observed that she could compete with other candidates. The conciliation ended in a failure and failure report was submitted on 26-7-94 The policy of the respondent bank to select part-time sweeper through Employment Exchange is contrary to Section 3 of the Employment Exchange (Compulsory Notification of vacancies) Act 1959 which states that the Act will not apply in relation to vacancies in any employment to do unskilled office work and hence the policy does not have any sanction of law. It is laid down by the Supreme Court in Bhagawati Prasad's case [90(I) LLN7] that the initial educational qualification prescribed for different posts is a factor to be reckoned with at the time of initial entry into service. When appointments were made as daily rate workers as were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation in the respective posts on the ground of nonfulfilment of qualification. Once Smt. Chitra was allowed to work as a temporary Sweeper in the leave vacancies and she having worked for a considerable length of time (She is still working) she cannot now be asked to compete with others. It is only just and proper for the respondent to confirm her in the permanent vacancy. Since Smt. Chitra was engaged as a temporary part-time sweeper and was also continued as such since 1990, she should have been given preference while filling up a permanent vacancy. Failure to do so by the respondent bank amounts to violation of Clause 20-12 of the Bipartite Settlement. Union came across an inter official communication dated 18-3-93 wherein the Regional Manager, Madurai has advised the manager of Town Hall Road Branch, to engage two or three persons other than Chitra as part-time sweeper on rotation basis paying nominal wages till such time the permanent part-time Sweeper is posted to that branch He was further advised not to engage one and the same temporary part-time sweeper continuously for more than 3 days in a week and that no single person should be allowed to be engaged continuously for 240 days in a calender year. The respondent bank wants to deprive permanency to Smt. Chitra which amounts to unfair labour practice as per clause 10 of the V Schedule of the I. D. Act, 1947. Petitioner prays to pass an award holding that the non-regularisation of the services of Smt. V. Chitra as illegal and unjustified and direct the respondent to regularise the services of Smt V. Chitra by appointing her as permanent part-time sweeper with effect from 30-6-93 and grant her consequential benefits.

3. The main averments found in the counter statement filed by the rsepondent are as follows :

Smt. V. Chitra has been engaged on casual basis in leave vacancies of permanent part-time sweeper. The respondent bank is a creature of central Act 5 of the 1970, and is controlled by the Government of India. The respondent bank is bound by the directives issued by the Government of India by letter F/1/2/1/77/Ir dated 30-9-78, the Ministry of Finance (banking Division) under whose control the Bank is functioning directed to Bank to ensure that the recruitment to substaff cadre irrespective of the nature and duration of the vacancy is to be made only through the employment exchange. Only where suitable candidates were not available from employment exchange, resort could be had to the recuritment other than through employment exchange, but only after obtaining non-availability Certificate from the concerned employment exchange The post of sweeper in the establishment of the bank is classified under Subordinate Staff cadre. Therefore, the respondent bank has been following the directive of the Central Government. As a matter of

fact, the recognised federation of Indian Bank Employees Union, to which the petitioner-union belongs to has entered into a settlement under section 18(1) of I.D. Act, with the bank, inter alia agreeing for the management of the link to approach the employment exchange in advance of the date of retirement of permanent sweeper. The permanent sweeper was to retire on 30-6-93. The respondent bank approached the employment exchange for sponsoring persons to be recruited as sweeper well in advance on 25-1-93 and a list of candidates sponsored by Employment Exchange was sent to the bank on 8-3-93 the allegation that Smt. Chitra was engaged for a long time is emphatically denied. She was engaged as a casual sweeper working in leave vacancy till 30-6-93. Thereafter she was continued to be so engaged with another person on daily wages depending upon the availability of Chitra and the other person. Since Smt. Chitra has not been sponsored through employment exchange there was no scope for considering her for permanent appointment as sweeper, by passing the medium of employment exchange. This aspect was effectively putforth before the conciliation officer also. Judgement referred to by the claimant union in para 5 of the claim statement has no application to the facts in this case. Merely because Smt. Chitra was engaged on daily wages, in leave vacancy, she could not be regularised and given permanent status. There is no right vested in her or in Union in law for making claim for regularisation, especially when she has not been sponsored through the Employment Exchange. Even assuming without admitting she has been engaged as casual sweeper for some time, the same does not confer upon her any right for seeking regularisation. Clause 20.12 of the Bipartite Settlement provides that other things being equal, temporary workmen will be given preference for filling permanent vacancies and if selected thet may have to undergo probation. Smt. Chitra has not satisfied the eligibility criteria namely the sponsorship through Employment Exchange. Only if that is satisfied other things being equal she could be considered for permanent absorption. There is no scope for making allegation of unfair labour practice, when the bank is bound to follow the procedure of appointing sweeper through Employment Exchange. The bank as earlier as in 1983 issued guidelines administratively to all its branches where by a branch can engage a person in leave vacancy only for certain number of days. This was issued in the interest of smooth administration and it cannot be interpreted in the manner in which the claimant union has purported to do. Even assuring without admitting that a person like Smt. Chitra works continuously for 240 days it does not confer on her any right to be regularised in the service of the bank. The reference to clause 10 of the schedule of the Industrial Disputes Act is misconceived. Smt. Chitra had not put in 240 days of service in any calendar year. Judgement referred to by the claimant union in para 5 of the claim has no application to the facts of this case. Respondent prays to pass an award rejecting the reference and claim made by the claimant union.

4. The point for consideration is: Whether the demand of the petitioner union of the management of Indian Bank, Madras for regularising the services of Smt. V. Chitra part-time sweeper is justified? If so, what relief is the said workman entitled to?".

5. The point : Smt. V. Chitra is working as temporary part-time sweeper in the respondent bank at Madurai Town Hall Branch. She was engaged in leave vacancies of permanent part-time Sweeper Smt. Rukmini Ammal who subsequently retired on 30-6-93. In pursuance of retirement of Smt. Rukmini Ammal, the respondent notified the vacancy on 25-1-93 and issued Ex. W. 1 Notification to fill up the said vacancy. On 10-3-93 Smt. V. Chitra sent Ex. W. 2 letter requesting the rsepondent management to appoint her as a permanent part-time sweeper. The same day, the Assistant Secretary of Madurai unit sent Ex. W 3 letter to the General Secretary of the petitioner-union at Madras to take up the matter with the management for permanent employment of Smt. V. Chitra. On 15-3-93 the petitioner union raised the dispute by sending Ex. W-4 letter to the Assistant Labour Commissioner. On 30-3-93 petitioner-union sent Ex.W-6 letter to the Zonal Manager of the rsepondent bank objecting to the instruction of the Regional manager of the respondent bank to the Manager of the Town Hall Road branch to disengage Mrs. Chitra. The reply of respondent management to the Assistant Labour Commissioner is Ex. W-7. The conciliation failure report is Ex. W-8.

6. The contention of the petitioner is that Smt. V. Chitra who was employed in leave vancacies should be preference over others while filling up the post of permanent vacancy. The contention of the respondent management is that the permanent vacancy has to be filled up only by referring to Employment Exchange and if Mrs. V. Chitra's name is sponsored by Employment Exchange, she could contest with others and she can be given preference if her name is so sponsored by the Employment Exchange. According to the respondent management no candidate whose name is not sponsored by the Employment Exchange could be appointed according to the various instructions and circulars of the Government of India.

The employment of Smt. V. Chitra on leave vacancy whenever Smt. Rukmini Ammal permanent part-time sweeper is on leave is not denied by the respondent management. As per Ex. W-3 letter dated 10-3-93 sent by the Assistant Secretary of the petitioner-union, from 1993 to 1997 in the four years Smt. Chitra has worked for 220 days. According to Ex. M-10 actually engagement dated 14-2-88 from 1990 upto 24-10-97 in a period of 8 years Smt. Chitra has worked for 723 days. Therefore, it is clear that Smt. V. Chitra has not worked continuously for 240 days in any year. She is still working as part-time sweeper in the leave vacancy alongwith other similar part-time workers. In Ex. M. 1 Circular issued by the Deputy General Manager (Personnel) dated 1-4-81 all the Zonal Managers and Regional Managers of the respondent bank have been advised to ensure that further inclusion in the panel for

temporary employment of the sub-staff should only be from those sponsored by respective Employment Exchanges. The Government of India by and order dated 12-2-90 Ex. M. 2 has prescribed recruitment of all temporary employees and empanelling of fresh candidates. By circular no IRC/G2/89/93 regarding evolving of a career path for the part- time sweeper a procedure has been set out. Certain norms also have been prescribed for filling up the vacancies of part-time sweeper that arise in higher scale of pay at places where the bank has more than one branch. Under clause 7 of the said circular in the case of retirement/promotion/resignation of part-time sweeper, the branch office concerned should take up the matter atleast 6 months in advance from the date of retirement of the concerned part-time sweeper with the Employment Exchange and same procedure has to be followed in the case of vacancy arising on account of death resignation of the permanent part-time sweeper under Clause 8 of the said circular. The directions given by the Government of India dated 30-9-78 to the Chairman and Managing Directors of the Nationalised Banks has clarified that all vacancies in the sub-ordinate cadre on the part of the public sector establishments should not only be notified to the Employment Exchange but also to be filled up through Employment Exchange alone and other permissible source can be adopted only if employment exchange concerned issues a non-availability certificate. On 25-1-93 the Regional Officer of the respondent bank has sent Ex. M. 3 letter to the District Employment Officer of Madurai to send a list of atleast 10 candidates for recruiting as part-time sweeper for the Town hall road branch at Madurai. On 1-3-93 the Regional manager has sent another letter to the District Employment Officer, Madurai to sent a list of candidates for recruitment of part-time sweeper to the same branch. The Employment Exchange, Madurai has also sent a list containing 10 names of candidates for the said recruitment as seen from Ex. M. 5 the name of Smt. V. Chitra does not find a place in the said list. In Ex. W-7 letter sent by respondent management to the Assistant Commissioner of labour on 22-6-93, the respondent management has contended that as per the present policy in force part time sweeper are selected through Employment Exchange subject to their fulfilment of other norms like age, qualification, that they have obtained a list from the Employment Exchange and the process of selection had started, that Smt. V. Chitra has been engaged by the Branch Manager whenever part time sweeper goes on leave and she had worked so far only during leave vacancies that she was not engaged by the Bank in any permanent vacancy, and not in continuous service, that as such she is not entitled for any relief under I.D. Act, 1947 and that she may compete with other candidates in the process. No doubt if Smt. Chitra's name had been sponsored by the Employment Exchange definitely she is entitled to get preference than other candidates sponsored by the Employment Exchange provided she fulfills other name such as age, qualification etc. But unfortunately her name has not been sponsored by the Employment Exchange ex. M 8, Circular No. 24/83 issued by the personnel department of the respondent bank on 4-3-83 which deals with engagement of persons during leave vacancies of sub-staff has dealt with the selection procedure wherein it has been specifically instructed that the Employment Exchange must be requested to sponsor candidates suitable to the norms and if the Employment Exchange is not able to sponsor candidates conforming to the norms, non-availability certificate should be obtained from the Employment Exchange. In 1992 II LLJ P 452, DELHI DEV. HORTICULTURE EMPLOYEES' UNION vs. DELHI ADMINISTRATION : DELHI & ORS the Hon'ble Apex Court has observed as follows :

> "Court has to take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they put in work for 240 days or more days has been leading. It had become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchange and to get employed directly those who are either not registered with Employment Exchange or those or who though registered are lower in the long awaiting list in the Employment Register. Such employment is sought and given directly for various illegal considerations, including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules and is continued for 240 or more days with a view to give the benefit of regularisation, knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. The other injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need for the workmen beyond the completion of the works. The public interests are thus jeopardised on both counts".

In this case Smt V. Chitra has worked as a temporary employee only in the leave vacancy of the permanent part time sweepers. In none of the years she has worked for 240 days. In 1993 II LLJ P 937, STATE OF HARYANA vs. PIARA SINGH & ORS. the Hon'ble Apex Court had held as follows :

> "Now coming to the direction that all those ad hoc/ temporary employees who have continued for more than an year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be

regularised even though (a) no vacancy is available for him—which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since his appointment is not factory. These are in addition to some of the problems indicated by us in para 12, which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale unconditional orders. Moreover, from the mere continuation of an adhoc employee, for one year it cannot be presumed that there is a need for regular post. Such a presumption may be justified only when such continuance extends for several years. Further, there can be no 'rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this stand point, the impugned directions must be held to be totally untenable and unsustainable."

The name of Smt. V. Chitra has not been sponsored by the Employment Exchange either at the time of initial appointment or when the list was called for to fill up the vacancy of permanent part-time sweeper due to the retirement of permanent part-time sweeper. When her name is not sponsored by the Employment Exchange, the respondent management is justified in not considering her name for selection or regularisation.

In the above circumstances award is passed holding that the demand of the Indian Bank Employees Union on the respondent management for regularising services of Smt. V. Chitra is not justified and the said workman is not entitled to any relief. No Costs.

Dated this the 15th day of December, 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For workman Side : Nil

For Management Side : Nil

Document Marked

For workman side

Ex W.1 25-1-93 : Notification regarding eligibility to the post of permanent part-time Sweeper.

Ex W.2 10-3-93 : Representation made by the Claimant for the management for the post of permanent part-time Sweeper.

Ex W.3 10-3-93 : Recommendation made by Union to the vacant post of Smt. Ruckmani Ammal.

Ex W.4 15-3-93 : Copy of letter sent by the Union to the management for the representation of the Claimant.

Ex W.5 18-3-93 : Copy of the letter sent to the Manager, Indian Bank by the Regional Manager, Madurai with regard to the appointment of casual workers in the place of Smt. Rukmani Ammal.

Ex W.6 30-3-93 : Subsequent letter sent by the Union for the regularisation of the Claimant V. Chitra.

Ex W.7 22-6-93 : Letter from the Indian Bank to the Assistant Labour Commissioner over regularisation of Services of Smt. V. Chitra.

Ex W.8 26-7-94 : Letter from Ministry of Labour to the Secretary with regard to the failure of Conciliation.

Document's for Management

EX M. 1 1-4-81 : Circular issued by Central Office to Sub- ordinate Offices.

EX M.2 12-12-90 : Government Notification

EX M. 3 25-1-93 : Letter to Assistant Employment Officer, Madurai.

EX M. 4 25-1-93 : Letter to Assistant Employment Officer, Madurai.

EX.M. 5 8-3-93 : Letter from Assistant Director, Employment Office, Madurai to respondent with list of Candidates.

EX.M. 6 18-8-93 : Circular regarding Green path to part-time Sweepers.

EX.M. 7 30-9-78 : Directive issued by Secretary, Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).

EX.M. 8 4-3-83 : Circular No. 24/83 issued by Respondent Bank to all Branches.

EX.M. 9 9-5-84 : Circular No. 90/84 issued by Respondent Bank.

EX.M. 10 — : List of days worked by petitioner.

नई दिल्ली, 19 मई, 1999

का.आ. 1695.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/अलपूजा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-1999 को प्राप्त हुआ था।

[सं. एल-12012/250/96-आई.आर.(बी.-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O.1695.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Alappuzha as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/250/96-IR(B-II]

SANATAN, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL : ALAPPUZHA

(Dated this the 21st day of April 1999)

Present :

SHRI K. KANAKACHANDRAN

Industrial Tribunal

I.D. No : 20/97(C)

Between

The Deputy General Manager, Canara Bank,

Disciplinary Action Cell, Circle Office,

Thiruvananthapuram

And

The Workman of the above concern represented by V. Money, (Peon), Vasudev Bhavan, Irumpil, Aruvipuram P.O., Neyyatinkara, Trivandrum Distt.

Representations :

Sri V.K. Ram Mohan Das, Advocate, Mullakkal, Alappuzha —For Management

Sri. Cheriyan Kuruvilla, Advocate, Alappuzha —For Workman

AWARD

1. This industrial dispute was referred to this Tribunal by Government of India by their order No. L-12012/250/96/IR(B-II) dated 26-6-1997. The issues referred for adjudication read as follows :

> "Whether the action of the management of Canara Bank in imposing the punishment of dismissal from service on Shri V. Money, Peon w.e.f. 3-5-1995 is legal and justified? If not, to what relief the said workman is entitled ?".

2. In the claim statement filed by the workman it is stated that alleging misappropriation of an amount of Rs. 12,974.50, he was placed under suspension by the management. On the basis of charge sheet dated 26-10-1993 framed against him, a domestic enquiry was conducted later through the Manager of Thiruvananthapuram Branch. After conducting the enquiry, a report was submitted by the Enquiry Officer finding the workmen guilty of the charges. By accepting the report of the Enquiry Officer, the Management dismissed him from Service. According to him during the period 1992-93, he was entrusted with the collection of non-clearing instruments over the counters of Sub-Treasury and the Co-operative Bank. During that period, his mother was in the Regional Cancer Institute, Trivandrum and she was undergoing treatment for the cancer. In connection with the treatment of his mother, he required money and on compelling reasons he utilized the bank's money without remitting the same in the bank. Therefore he pleaded for mercy before the management not only at the time of domestic enquiry but also at the time when he replied notice prior to the awarding of punishment. But his plea was rejected. The appeal filed by him against the punishment of dismissal also did not yield any result. According to him at the time of dismissal he had 13 years of service and at any time before, he was not subject to any disciplinary proceedings. Since his past record was not at all bad at any time, by taking a lenient view, the punishment imposed him may be set aside.

3. In the counter statement filed by the management the manner in which domestic enquiry was conducted had been explained in pargraph 8 of the counter statement. The details of the method in which misappropriation was committed by the workman in between 21-7-1993 and 13-8-1993 was also explained. The total amount misappropriated by him at seven occasions would come to Rs. 12,974.50. The dates on which the Bank's money was temporarily misappropriated are also given in detail. It is stated that the workman had paid entire amount misappropriated by him Since the misconduct committed by the Workman was of a serious nature and the same was admitted by him, no punishment other than dismissal was appropriate in the given circumstances.

4. After the filing of statement filed by the parties it was posted for hearing on the question of validity of the domestic enquiry. It was submitted on behalf of the workman that the misconduct alleged was true and the same was admitted by the workman in the domestic enquiry itself. Therefore according to the learned counsel, his plea is only for some other punishment than dismissal and that is in view of the fact that the temporary misappropriation of bank's money was

only on account of certain compelling domestic problems. It is specifically stated in the claim statement that during the period in which misappropriations were made, his mother was seriously ill on account of cancer and was undergoing treatment in the Cancer Research Institute, Thiruvananthapuram, and only because of emergent financial requirements, he misappropriated the money although he was well aware that it was a serious misconduct.

5. Of course this Tribunal can interfere on the punishment of dismissal, termination or discharge etc. effected in the case of a workman if there is sufficient grounds for interference. If the evidence adduced is quite insufficient to arrive at a conclusion that the alleged misconduct was committed, there would be scope for interference. But in this case after admitting the misconduct of misappropriation, the workman had paid the entire amount later and pleaded for mercy. This is not a ground for interference by this Tribunal while exercising the powers vested in this Tribunal under Sec. 11-A of the Industrial Dispute Act. However this is a fit case in which the management can reconsider the issue after a verification whether his mother was really and seriously ill on account of cancer and whether she died while in the Hospital. The service record prior to the commission of misconduct should also be examined by the management. Whether the punishment should be modified or not is purely a prorogative of the management and for the exercise of that, this Tribunal cannot give any positive direction. But it can only be observed that this is a fit case in which the management can reconsider the whole issue in the given facts and circumstances.

6. The Orissa High Court had occasion to consider a some what similar situation in Managing Director Orissa Agro Industries Corporation Vs. Bhimsen Maharana and others (1990 Lab IC 1531). In para 20 of the Judgement, a Division Bench or Orrisa High Court observed as follows :—

> "20. That justice must be tampered with mercy and that the erring workman should be given an opportunity to reform himself are principles which should be kept in mind while dealing with the punitive action taken against the workman. As observed by the Gujarat High Court in Gujarat State Road Transport Corporation's case (1983 Lab IC 1349), (Supra), in imposing punishment on an erring employee an enlightened approach informed with the demands of the situation and the philosophy and spirit of the times requires to be made. It cannot be said that the length of service of the delinquent workman, his past good record and his socio ecomic condition are not relevant factors which should weigh with the Labour Court while exercising its discretion under Section 11-A of the Act. The very denial of 50 per cent of back wages to the opposite party No. 1 was considered by the Labour Court to be sufficient punishment for the misconduct proved against the workman and this view adopted by the Labour Court in the facts of the case cannot be said to be either unreasonable or contrary to law."

7. In the above case, the High Court found some justification for the setting aside the dismissal imposed on the workman who was compelled to commit some misconduct on account of reason beyond his control. According to me, this is a fit case in which the management can examine the rational of that judgement while reviewing the case of the workman.

8. With the above observation an award is passed.

(Dated this the 21st day of April 99)

K. KANAKACHANDRAN, Industrial Tribunal

नई दिल्ली, 19 मई, 1999

का.आ. 1696.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-1999 को प्राप्त हुआ था।

[सं. एल-12012/280/93-आई.आर.(बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1696.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 19-5-99

[No. L-12012/280/93-IR(B-II]

SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 22 of 1994

Parties : Employers in relation to the management of Central Bank of India

AND

Their Workmen.

Present :

Mr. Justice A.K. Chakravarty

.....Presiding Officer

Appearance :

On behalf of Management	Mr. S.K. Chatterjee, Deputy Chief Officer, Law of the Bank.
On behalf of Workman	Mr. D.K. Chatterjee, General Secretary of the Union.
State : West Bengal.	Industry : Banking.

AWARD

By Order No. L-12012/280/93-IR (B-II) dated 26th July, 1994, the Central Government in exercise of its powers under section 10 (1) (d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Central Bank of India, Calcutta in denying to revise the fitment formula in respect of Shri Gopal Chandra Roy, clerk on his promotion from sub-staff to clerical cadre is justified ? If not, what relief is the said workman entitled to?"

2. Instant reference has arisen at the instance of Central Bank of India Employees' Congress (in short, the union) for denial of the management of the Central Bank of India (in short, the management) to revise the fitment formula in respect of one Gopal Chandra Roy on his promotion from sub-staff to clerical cadre.

3. Union's case, in short, is that the concerned workman Gopal Chandra Roy was appointed as a sub-staff on 14-9-1981 at the Entally Branch of the Central Bank of India, Calcutta. While working there, he was allowed to work as a Bill Collector from the date of his appointment till 31-12-1986 for which he was allowed to draw special allowance @Rs. 34/- from 1981 to 1983 and thereafter @ Rs. 56/- from 1984 to 1986. He worked as Bill Collector in temporary capacity as the management could not depute any permanent Bill Collector at the Entally Branch for more than 5 years i.e., from 1981 to 1986. As per agreement of the Central Office at Bombay between the Central Bank of India Employees Union, Bombay affiliated with All India Central Bank Employees Congress and Central Bank of India management, the employees who have completed minimum 5 years of service in the Bank or have officiated continuously for a minimum period of one year in the post attracting special allowance in a permanent vacancy shall be absorbed in the relevant places against which they have already worked for the period mentioned above. The concerned workman was promoted on 1-1-1987 to the clerical cadre and as per clause 9.17 of the Bank's promotion policy agreement dated 20-12-1975, fixation of emoluments in the clerical scale of pay on promotion from sub-staff to clerical cadre shall include special allowance drawn, if any. The management also acknowledged the same position and has actually allowed the benefit of such fixation to other staffs obtaining promotion from subordinate cadre to clerical cadre. The management, however, wrongly made the fitment in the clerical cadre of the concerned workman by ignoring the special allowance drawn by him while in the subordinate cadre. The management on his promotion to clerical cadre fixed his pay as follows : basic pay Rs. 550/-, D.A. Rs. 467.50, C.C.A. Rs. 65 and H.R.A. Rs. 68.75, totalling Rs. 1,151.25. As per bipartite settlement dated 17-9-1984 the total salary of the concerned workman should have been basic pay Rs. 615, D.A. Rs. 522.75, C.C.A Rs. 65/- and H.R.A. Rs. 76.80, totalling Rs. 1279.55 p. The union has accordingly prayed for fixation of pay of the concerned workman upon fitment as stated above.

4. The management in its written statement has alleged that the alleged agreement dated 19-8-1987 had applicability only in Bombay agglomeration area and not in Calcutta. For other places for fixation of salary on promotion from sub-staff to clerical cadre, the special allowance should be included only if it was drawn by the employee on permanent assignment supported by a written order of the management as per Clause 9.17 of the Bank's promotion policy agreement dated 20-12-1975. It is alleged that since Shri Roy did not enjoy the special allowance on permanent assignment by any written order of the management, the question of including special allowance for fixation of salary on his promotion to clerical cadre from subordinate cadre does not arise. The Bank has thus alleged that though the concerned workman was working as Bill Collector and was enjoying special allowance for working in that position for a period of about 5 years, still then, he shall not be entitled to claim the special allowance to be included in the fitment formula on his promotion to clerical cadre from subordinate cadre as such amount can be included only if it is drawn by the employee in a permanent assignment by a written order of the management. It is also alleged that an employee drawing special allowance purely on temporary basis cannot claim it's inclusion in the fitment on his promotion. The Bank has accordingly alleged that it has made the proper fitment of the salary of the concerned workman on promotion. The Bank thus challenges the case of the union as without any basis and prays for dismissal of the same.

5. Heard the representatives of both sides, namely, Mr. S.K. Chatterjee for the management and Mr. D.K. Chatterjee for the union.

6. The union examined the concerned workman Gopal Chandra Roy as its only witness, while the management has examined one Arun Kumar Sen, an officer of the Bank as its sole witness. Both parties also produced certain documents.

7. There is no dispute regarding the facts of this case. Admittedly, the concerned workman Gopal Chandra Roy was appointed as a sub-staff on 20-9-1981 in the Entally Branch of the Bank and while working in that capacity he obtained his promotion to the post of Clerk on 1-1-1987. The present dispute has arisen over the fixation of his pay on promotion to the clerical cadre. According to the management it should be Rs. 1151.25p. which shall include, basic pay, D.A.,C.C.A. and H.R.A. elements only and not the special allowance. The union, on the other hand, claims that it should be Rs. 1279.55p. which includes special allowance of Rs. 56/-also.

8. Before proceeding to discuss the rival contention of the parties, some other admitted facts are also to be noted in this connection. The concerned workman while working as a sub-staff was also working as a Bill Collector from the very beginning of his service and worked continuously in the same capacity upto 1986. He used to receive special allowance per

month for doing such work of Bill Collector. In his evidence he stated that he was a peon initially with the duty attached for collection of bills which is a special duty and that special duty he was discharging under the written instruction of the management and the management also sanctioned special allowance for the same. He referred to Ext. W-2 for the purpose and it will appear from this letter addressed to the Branch Manager, Entally Branch that "Please note that Shri Roy will work at your end as a Bill Collector fully on temporary basis until we depute the permanent Bill Collector at your office."

9. There is no dispute in this case that special allowance if drawn by an employee in a permanent assignment under written order of the management shall be included in the fitment. The short point for consideration in this case, therefore, will be whether an employee with temporary assignment by a written order of the management to the above effect shall be entitled to get such privilege of counting special allowance on promotion for his working continuously for 5 years at a stretch in the said special allowance carrying post.

10. Mr. D.K. Chatterjee, representative of the union tried to support his claim by referring to the memorandum of settlement dated 4th November, 1987 marked Ext. W-15 in this case. Mr. S.K. Chatterjee, representative of the management, however, seriously challenged this attempt of the union. He pointed out that this agreement shall have effect only in respect the award staffs for the posts attracting special allowance in Bombay Agglomeration area. It was submitted on behalf of the union that the effect of the agreement should not be allowed to remain centred in a particular area but all staffs of the Central Bank of India shall liable to get the advantage of the same. In this settlement one year of officiating service in a particular post shall amount to absorption in the said post and accordingly as per that agreement the pay of the sub-staff officiating in any particular post for more than one year shall be entitled to have such special allowance calculated towards his basic pay. I am not in a position to agree with the contention of the union that this agreement shall have universal application because the agencies making the agreement wanted to localise its effect in a particular area. There accordingly cannot be any universal application of the terms of the said agreement.

11. It is therefore clear that the parties are bound by the terms of the memorandum of agreement dated 20-12-1975 (vide Ext. M-2) entered into between the Central Bank of India and All India Central Bank Employees Federation. In Clause 9.17 of the said memorandum which deals with fixation of emoluments in clerical scale of pay on promotion from subordinate to clerical cadre, the prescribed formula is that "Special allowance for this purpose shall be included only if drawn in a permanent assignment by a written order of the management. He shall be fixed into the clerical cadre of pay at a stage where, together with other allowances, e.g., Dearness Allowance, City Compensatory Allowance, if any and House Rent Allowance, if any, he will get a minimum increase of Rs. 40/- in his total emoluments over what he was getting as a member of the subordinate staff." I may also refer to Ext. M-4 which is a reply to the representation of the concerned workman. It was reiterated in this letter that special allowance for the purpose of fitment is taken into account only when the same is sanctioned by the management on permanent assignment. Obviously such posting is made on city-wise seniority basis. The concerned workman having admittedly been enjoying special allowance only on purely temporary basis without any such sanctioned by the management, no question of inclusion of the special allowance on his fitment of salary on his promotion to the clerical cadre can arise as that will be contrary to the fitment formula prescribed in the bipartite settlement between the Bank and the union. Both the parties being bound by the terms of the agreement under the law, no question of giving any relief not prescribed in the agreement can arise for however long a period he had been receiving the special allowance on temporary assignment.

12. The union also has cited several other cases of the employees who have been granted special allowance even though they worked on temporary basis. Upon careful examination of these cases I find that in these cases too there was no transgration of the fitment formula envisaged in the agreement of 1975.

13. So, upon careful consideration of the facts and circumstances, evidence on record as well as the position of law in this matter, I am to hold that the management has rightly refused to include the special allowance of the concerned workman while making fitment of his pay in the clerical cadre. The claim of the union being without any basis whatsoever, is accordingly liable to be rejected. The workman accordingly shall not be entitled to any relief in this case.

This is my Award.

Dated, Calcutta, the 7th May, 1999.

A.K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1697.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं० एल-12012/321/97-आई.आर. (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O. 1697.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial

Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/321/97-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 4th May, 1999

PRESENT : JUSTICE R. RAMAKRISHNA

PRESIDING OFFICER

C.R. No. 11/1998

I PARTY	II PARTY
Sri Sulochana K. Suvarna C/o. Sri C.A. Mendon C2-10, Dept. of Space Housing Colony, HAL II Stage, Indiranagar, Bangalore-38	The General Manager Vijaya Bank Head Office M.G. Road, Bangalore-1

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/321/97/IR (B. II) dated 19-1-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Vijaya Bank in dismissing Sh. Sulochana K. Suvarna w.e.f. 16-3-1987 on grounds of falsification of accounts and mis-appropriation is legal and justified ? If not, to what relief the said workman is entitled ?"

2. The first party, at the time of this dismissal order was working as a Clerk at Kolar Branch. On 2-4-1982 he was placed under suspension contemplating a departmental enquiry. A charge sheet dated 2-6-1982 (Ex-M-2) was issued to her making allegation of falsification of accounts and mis-appropriation of Banks money. The charge mainly pertains of showing higher value of stamps used for outward letters other than the actual value of stamps required and the extra amount thus gained used to be mis-appropriated by the workman.

3. The charge sheet contains several fradulant practise of collecting inflatted amounts. Some of the allegations are high lighted in the charge sheet from 10-12-1981 and some of the allegations relates to from March 1980 to April 1980. Infact at para No. 18, the charge sheet high lighted the amounts withdrawn for incurring expenses towards the stamps though substantial stock of stamps was available in the custody of the first party.

4. On the basis of this charge, an enquiry was conducted by one Shri Shivaram Shetty. In the said enquiry two witnesses were examined for the management and as many as 34 documents were examined for the management exhibits. The first party has not examined himself nor examined any witnesses on his behalf. He has also not produced any documents on his behalf.

5. The enquiry officer on the assessment of both oral and documentary evidence gave his findings dated 30-9-1986 as per Ex-M-4. After discussing exhaustively the materials produced in the enquiry the enquiry officer concluded as follows :

> "After due consideration of the entire proceedings of this enquiry I find that the charge sheeted employee Shri Sulochana K. Suvarna is :
>
> (i) Not guilty of the charges under falsification of accounts and mis-appropriation of banks money which are acts prejudicial to the interest of the Bank as per charge one. However, gross negligence of the delinquent involving the bank in finanfial loss has proved and is guilty under sub-clause (J) of the clause of 19.5 Chapter XIX of the Bipartite Settlement and
>
> (ii) Guilty of charges under provision clause (D) of clause 19.7 of Chapter XIX of the Bipartite Settlement."

6. Clause 19.5 defined the expression of gross misconduct by enumating more of the acts and omission on the part of the employee from (a) to (i). Sub-clause (J) is "Doing any act prejudicial" to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

7. Clause 19.7 defined that what is minor misconduct and what type of acts and omissions constitute minor misconduct.

8. Under clause 19.5 any employee found guilty of gross misconduct may be dismissed without notice or be warned or censured or have the adverse remark any to be Befined or have his increment stopped or if his misconduct is condoned and to be merely discharges.

9. The punishment for minor misconduct are classified under clause 19.8 which consisted of warning or censure, entering the adverse remark against him, increment stoppage for a period of not longer than 6 months. under 19.9 the workman found guilty of misconduct whether gross or minor shall not be given more than one punishment in respect of any one charge.

10. As it relates to gross negligence which is the first finding of enquiry officer in the conclusion referred to above. the discussions is to be found at page No. 26 (b). For the purpose of understanding the said discussions are reproduced

(b) Gross negligence of negligene involving or likely to involve the Bank in serious loss.

From documentary as well as oral evidences, it could be noticed that, the domestic enquiry had failed to take proper care in entering the outward tappals meant for various departments of HO and RO in the concerned register i.e. outward Register for HO/RO.

The DE as per his duties deposed by MW-1 and MW-2 should have properly weighed each tappals and affixed only the required stamps. Though the method of weighing adopted by PO during the examination of MW-1 and MW-2 during his special inspection questioned by DR. DR also got the statements weighed through MW-1 during cross examination and recorded the weight. Since all the letters meant for HO was sent by ordinary post, it is proved that, the postage affixed is disproportionate to its actual requirement which resulted in avoidable loss to the bank. Besides, sending separate covers/ tappals to each departments of HO and more than one cover to RO on 10-12-1981 also resulted avoidable loss to the bank.

Further, keeping disproportionate stamp/cash in stamps-in-hand account by the DE could have also reduced avoidable loss to the bank.

The DE could have showed the outward tappals to officer after affixing the stamps on the cover for verification and sought better advice if he was not very conversant with the postage to be affixed corresponding to the weight.

Therefore, I hold that the DE was gross negligent involving the Bank in loss as per the edvidence brought before the enquiry.

11. The Disciplinary Authority after the receipt of the enquiry report sent a communication, purported to be the second show cause notice, proposing the punishment which is dated 13-12-1986. By this communication the Disciplinary Authority enclosed a copy of the enquiry findings dated 30-9-86 and states;

"After final consideration of the enquiry proceedings and evidence placed on records and the copy of the enquiry findings dated 30-9-1986 submitted by the enquiry officer only in respect of charge No. 2. But I cannot accept the findings of the enquiry officer with regard to charge No. 1 for the following reasons".

12. Thereafter the disciplinary authority writes a detailed order and concludes by saying :

"However the highest punishment of dismissal from the services of the bank without notices as proposed to be imposed on him. If you wish to submit any representation regarding the proposed punishment you should do so within seven days of receipt of this letter failing which it will be deemed that you have no representation to make in the matter and final order imposing the punishment will be passed without reference to you".

13. The first party submitted a detailed explanation dated 27-1-1987. He has high lighted in this explanation, how the reasoning of the disciplinary authority is not supported by any evidence and therefore such opinion cannot be formed. Thus first party not agreed with the findings on both charges. When this being his defence he states in his reply that the evidence of MW-1, MW-2 are interpretted in a manner to suite the disciplinary authority to come to a different conclusion and therefore such conclusion is not warranted.

14. Having regards to these facts and circumstances we have to examine the law governing on this point and also to find out whether the order of dismissal was found necessary in this case.

15. The first party has specifically contended that the enquiry officer having found not guilty of the charges under falsification of accounts and mis-appropriation of Banks money, is proposed to hold that "gross negligence of the delinquent involving the bank in financial loss is proved and his guilt under sub-clause (J) of the clause 19.5 Chapter XIX of the Bipartate settlement". It is his further contention that this is a case of wrong conclusion and the order is perverse. It is also his further contention that the Disciplinary authority even went to the extent of interpreting and appreciating the evidence in a way prejudicial to the interest of the workman and therefore the findings of the enquiry officer and the findings of the Disciplinary Authority are liable to be quashed.

16. It is further contention when the order of the enquiry officer is perverse the disciplinary authority went further to over turn this order to implicate the workman which is also perverse order.

17. It is to be held at this Juncture that the enquiry officer holds not guilty or falsification of accounts and mis-appropriation of Banks money, his further reasoning that the first party is guilty of gross misconduct is contrary to his own findings. Therefore the findings of the enquiry officer is perverse.

18. The disciplinary authority after forming its opinion asks the workman to give his explanation and therefore it amounts to putting a cart before the horse. It is further contention that the management have also given a police complaint at Kolar city police station alleging mis-

appropriation of postal stamps worth Rs. 13,773. The police after investigation found that there is no substance in the complaint and therefore, they have filed a 'B' report and the learned Magistrate also accepted the 'B' report on 19-8-1989 in CR No. 291/98, therefore the first party submitted, that the entire proceedings of the second party is made with ill-motive which amounts to victimisation and unfair labour practice.

19. The disciplinary authority has issued the notice communicating his intention of disagreeing to the findings of the enquiry officer as it relates to the first charge on 13-12-1986. After passing the order of dismissal the workman approached the Appellate authority but without any success. Then he filed a writ petition before the Hon'ble High Court of Karnataka in W.P. No. 12777 of 1987. This writ petition was decided on 20-9-96. By this order the writ petition was dismissed reserving the right of the workman to avail himself the remedy under Industrial Disputes Act. The court also directed if the matter comes up before the Industrial Tribunal the same shall be decided without reference to the fact of limitations.

20. Therefore, a valuable time of the first party was wasted in delay in the enquiry, police investigation, filling of writ petition and the reference is received for adjudication on 19-1-1998.

21. We have to mainly consider the validity of the order passed by the enquiry officer and the order of disciplinary authority in over turning the findings of the enquiry officer on charge No. 1 and thereafter, passing an order of dismissal with notice. Since the materials to set aside the order of the enquiry officer, the legal aspect of the matter and the jurisdiction of the disciplinary authority in over turning and passing an order contrary to the findings given by the enquiry officer is to examined.

22. The power of the disciplinary authority in over turning the findings of the enquiry officer is recognised under law. In State of Rajathan vs. Sexena M.C. 1998(1) LLJP 1244 at Para No. 5 the Hon'ble Supreme Court held :

> "The Disciplinary Authority recorded reasons for disagreeing with the findings of the enquiry officer and held that the charges against the respondent has been established. It is well settled that the disciplinary authority can disagree with the findings arrived at by the enquiry officer and act upon his own conclusion but the only requirement is that the said disciplinary authority must record reasons for his disagreement with the findings of the enquiry officer. If the disciplinary authority gives reasons for disagreeing with the findings of the enquiry officer than the court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said findings."

23. The right of the delinquent to have a copy of equiry report before disciplinary authority takes action on that report is also well recognised. If the findings of the inquiry officer is against the workman, he is entitled to give his representation to the disciplinary authority to deffer from the reasoning of the enquiry officer and also to enable the disciplinary authority to mould the mode of punishment. Even the disciplinary authority after receipt of enquiry report is expected to issue a second show cause notice on the question of proposed punishment if it is considered the order of the enquiry officer is acceptable. The right of a workman to get a copy of the report to submit his opinion is recognised by the pronouncement of judgements. In Union of India and others Vs. Mohammed Ramzan Khan, AIR 1991 SC 471 and Managing Director, ECIL Vs. Karunakara, AIR 1994 SC 1074. The law enunciated in Mohammad Ramzan Khan's case was given prospective effect in Karunakaran's case. The Supreme Court consistantly held that whenever the rules require an inquiry to be held, for inflicting the punishment in queston, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him.

24. In Punjab National Bank and others, appellants vs. Kunj Behari Misra, AIR 1998 Supreme Court 2713, the scope on this field is further enhanced. The law laid down in this decision is whenever the disciplinary authority proposed to deffer from the order of the enquiry officer, which is favourable to the workman, the disciplinary authority must give an opportunity of hearning the delinquent before recording its conclusions. This position is high lighted in Paras 16, 17 and 18 and held :

> The disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decide to impose penalty on the basis of its conclusions. It is necessary for the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse findings, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will, therefore, not stand to reason that when the findings in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. Under Regn. 6 the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The discplinary proceedings stand concluded with decision of the disciplinary authority. It is the

disciplinary authority which can impose the penalty and not the enquiry offcer. Where the disciplinary authority itself holds an enquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitous that where the charged officers succeed before the inquiry officer they are deprived to representing to the disciplinary authority before the authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry.

25. The contention of the learned advocate for the second party is that the order of the disciplinary authority is of the year 1986 and the law laid down by the Supreme Court in Mohammed Ramzan Khan's case is on 20-11-1990 when it was held to be prospective, the law enhanciated in Punjab National Banks's case (Supra) would also be a prospective effect and therefore the court to take into consideration a law that was prevailing during 1986. The learned advocate further contended that the disciplinary authority has issued a show cause notice dated 13-12-1986 enclosing a copy of the enquiry findings and also having given opportunity to the workman to submit his explanations in writing and also giving opportunity for oral representation there is no deniel of opportunity to the workman.

26. It is true that the disciplinary authority has complied the natural justice, to the extent possible. But the anomaly that arose at this juncture was that the disciplinary authority has given its reason in not accepting the findings of the enquiry officer in great detail. It is to be noted the same reasoning is adopted ver-batim in his final report dated 16-3-1987. I have carefully gone through the reasonings contained in the letter dated 13-12-1986 and 16-3-1987 and the reasoning given in December letter is reproduced in March letter. What this court wanted to impress at this juncture is that the disciplinary authority has already made up his mind to deffer the order of the enquiry officer on charge No. 1 by giving reasons. This amounts to prejudging a issue without hearing the other side and therefore, it is not permissible under law. If the disciplinary authority had stated its desire to disagreeing with the findings of the enquiry officer in a broad out line, the things would have been different. Therefore, the conclusion is, that the disciplinary authority has not considered the explanations offered by the workman both oral and written. Therefore, it is a case where necessary opportunity was not given to the workman before the disciplinary authority disagreeing with the reasoning of the enquiry officer. On this ground alone the order of the disciplinary authority liable to be rejected. As it is a prejudged opinion of the disciplinary authority which is against the principles of natural justice.

27. The learned Advocate for the second party has placed reliance on a series of judgements as it relates to the punishment and the latches committed by the workman.

28. In Ratan Chandra and others Vs. Union of India and others, AIR 1993 Supreme Court 2276, a retrenched employee enforcing his right after a lapse of 15 years. The court considered and held that the right is lost by delay.

29. In U.P. Electricity Board Vs. Presiding Officer, Labour Court 1998 LAB IC 1702 a learned single Judge of the Allahabad High Court has refused to grant relief where a workman raised an Industrial Dispute after delay of 8 years.

30. The above decisions are required to be discussed due to the fact that the first party by ignorance or wrong legal advise has filed the writ petition before the Hon'ble High Court of Karnataka in the year 1987 which came to be decided only in the year 1996 directing the workman to raise the Industrial Dispute. It is also high lighted in that judgement that there shall not be any reference to the delay if the Tribunal considered the reference.

31. The next judgement relaid by the second party is of our own high court in D. Padmanabhudu and Bank of India and another 1995 (1) LLJ 1076.This is a case where on proved misconduct a lenient view was taken by the Labour Court on the ground that misappropriated amount do not belongs to the Bank. The same was set aside by the High Court.

32. In view of these circumstances the disciplinary authority was not correct in over turning the reasoning of the enquiry officer on charge no. 1 and also not justified, in considering the same as major misconduct and imposing a punishment of dismissal. Though we agree to some extent the report of the enquiry officer the result of the report is to impose only minor punishment, since considerable time has been elapsed. This exercise cannot be under taken at this juncture. Having regards to these facts and circumstances I make the following order :

ORDER

The second party are not justified in dismissing the services of the first party. Therefore, the order of dismissal is hereby set aside. The second party is directed to re-instate the first party. Since the first party suffered all these years, though the findings given by the enquiry officer that the workman is not guilty under falsification of accounts and misappropriation of Banks money, the second party shall pay 50% of back wages to the first party. The first party is entitled for continuity of service and his salary shall be fixed as if he has continued in service in the same capacity.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 4-5-1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1698.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/328/95-आई.आर. (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, 19 May, 1999

S.O.1698.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-I, Mumbai as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/328/95-IR(B-II]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, MUMBAI

Present

Shri Justice C.V. Govardhan

Presiding Officer

Reference No. CGIT-2 of 1997

PARTIES

Employers in relation to the management of Indian Bank

and

Their Workman

APPEARANCES :

For the Managrment : Shri M.B. Anchan, Advocate.

For the Workman : Shri. Tigde, Advocate.

State : Maharashtra

Mumbai dated the 10th day of May, 1999.

AWARD

1. The Central Government by its order dt. 02-1-97 has referred the following dispute between the management of Indian Bank, Cuffe Parade, Bombay and their workman for adjudication by this Tribunal.

"Whether the action of the management of Indian Bank, Maker Bowers, Cuffe Parade, Bombay in treating the services of Shri Ramdas S. Nikam, Cashier-Cum-Clerk Sr. No. 26406 as voluntary cessation of employment w.e.f. 26-7-1993 vide clause No. 16 of the bipartite settlement of 10-4-1989 is justified or not? If not to what relief the workman is entitled for?"

2. The case of the workman is as follows:

The workman joined as a Peon in the year 1978. He was promoted as Clerk-cum-Shroff in the year 1989 under the management of Indian Bank. On 26-3-93 the daughter of workman met with a major accident. There was nobody in his family to take care of her. The workman was therefore, attending on her and was not present on duty that date. On account of the same and monetary difficulties he suffered a nervous break down on 06-4-93 and was taking treatment under Dr. Manoj S. Bhavsar from 6-4-93 to 18-8-93. From time to time he had been informing the bank his inability to attend the duty enclosing medical certificate. When he reported for duty on 18-8-93 alongwith a medical certificate issued by Dr. Manoj, the management did not allow him to resume duty. He was informed by the Chief Officer that his services were terminated as per the bipartite settlement and an order to effect that his employment came to a voluntary cessation from 26-7-93. Before passing the order the bank did not issue any charge sheet, or conducted enquiry for his absence. It has not paid retrenchment compensation or notice pay as per the Provisions of law. The action of the management is therefore unjustified. The bipartite settlement providing for cessation of employment voluntarily is against the provisions of the Constitution and industrial Dispute Act. The said clause is illegal and void. There was no reply to his written submissions to the Dy Gen. Manager. The workman was a member of Executive Committee of Indian Bank Employees Association from 1980—1988. He was victimised for his union activities. The workman has no other source of livelihood. Hence, he prays for an order of reinstatement with back wages and other benefits.

3. In the written statement the opponent contends briefly as follows:

The applicant was absenting himself from duty since 26-3-93. The Bank had sent a telegram to the applicant to his last known address on 17-4-93. A letter dt. 29-4-93 sent by registered post was returned stating the reason of absence. After a continuous absence of 90 days of the workman, the opponent had sent a notice on 26-6-93 by registered post calling upon the applicant to report for duty within 30 days, failing which it would be deemed that he had retired voluntarily as per bipartite settlement. This notice was also returned

with an endorsement that "Addressee left the place". Since the applicant did not rejoin duty before the stipulated period, the opponent informed him by registered letter dated 4-8-93 that he was deemed to have voluntarily retired from the service of the Bank with effect from 26-7-93 as per the bipartite settlement. The service of the letter to the last known address is a valid service. The Bipartite settlement is properly complied with and the order dated 12-8-93 is valid and is binding on the applicant. The medical certificate have been obtained by the applicant after proceedings were initiated before the Labour Commissioner. The certificate may not be true. The Regional Officer or other office of the Bank did not receive any letter said to have been sent by the applicant under certificate of posting. He had not sent any letter by registered post. The applicant had voluntarily retired from the banks service and the bank notified the same by its order dated 12-8-93. The name of the applicant is therefore, removed from rolls. There is no provision for issuing a charge sheet or conducting an enquiry as per the bipartite settlement. The bipartite settlement was signed by the management of banks and the workmen represented by All India Bank Employees' Association and National Federation of Bank employees. It provides for service conditions applicable to the staff. The clause regarding voluntary cessation of employment is applicable in cases where an employee absents himself from work without submitting an application for leave for 90 days or more consecutively. The bank has complied with the clause that notice is to be given within 30 days. The order passed by the bank is therefore, valid. It is not in violation of the Constitution or Industrial Dispute Act or Contract Act as alleged. The application is therefore, liable to be dismissed.

4. The worker has come forward with a claim that his services were terminated by an order of dismissal with retrospective effect passed by the bank without issuing notice or holding any enquiry, payment of retrenchment compensation notice pay and therefore, he is entitled for reinstatement with back wages and other benefits. According to the worker on account of the accident to his daughter and his attending on her and due to monetary difficulties he suffered a nervous breakdown on 6-4-93 and was taking treatment from 6-4-93 to 18-8-93 under Dr. Manoj Bhavsar and that was the reason for his inability to attend duty. It is also his claim that he had been intimating his inability to attend duty through letters sent to the Bank under certificate of posting dt. 15-4-93, 19-5-93, 17-6-93 and 16-7-93 enclosing medical certificate. He has also produced copies of the letters said to have been written by him and the certificates of posting with the seal of the post office. The worker has been sending letters to the bank expressing his inability on account of his illness, therefore, cannot be doubted. The management contends that they have not received any letter from the worker and he has not sent any letter by registered post to the Regional Office or other offices; but the management has not examined any witnesses to say that the bank has not received any letters sent by the worker. The bank only contends that when the worker absented himself a telegram was sent advising him to report for duty immediately failing which the matter will be viewed seriously. Except typed copy of a telegram the bank has not produced the receipt issued by the post office to establish that such a telegram was actually sent. Similarly, the bank claims that a letter by registered post was sent on 29th April, 1993 calling upon the worker to report for duty immediately, on receipt of this letter and another letter dt. 26-6-93 in which it is stated that the worker was absent unauthorisedly and instructed him to report for duty immediately within 30 days of receipt of that letter. The management has not produced any receipt for sending these two letters by registered post to the workers concerned. They have not field the returned covers in which it is alleged by the management that there are endorsements to the effect that "Not Found". The third letter sent by the management is on 12-8-93 in which the Zonal Manager is said to have called the attention of the worker to their earlier letters and since the worker has failed to join on or before 26-7-93 he was deemed to have voluntarily retired from the service of bank at the close of working hours of the Bank on 26-7-93 under voluntary cessation of employment of bipartite settlement dt. 17-9-84 duly modified by the settlement dt. 10-4-1989. This order even though is said to have been sent to the worker, except a vague statement in the written statement that the order has been sent by registered post no material has been placed by bank to established the same by filling the postal receipt of the returned cover. There is not even oral evidence to the effect that the letters were refused by the worker or the postal authorities could not serve the letter. The worker in his evidence has stated that he has not shifted his residence. He has only stated that his doctor has shifted his residence from Bombay to Surat and he has not shifted his residence. When the worker has stated that he has not shifted his residence there is no room to hold these letters were sent to his address and they were returned as the addressee was not found. As already observed by me there is not even oral evidence to that effect. In the decision of the Supreme Court reported in 1998 Supreme Court 2722 Union of India and others vs. Deenanath Shantaram and Ors. It has been held as follows:

"A document sent by registered post can be stated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "Not Found" it cannot be legally treated to have been served".

As already observed by me, there is no material placed by the management to show that actually the letters dt. 29-4-93, 26-6-93 and 12-8-93 were sent by registered post to the worker and they were returned with an endorsement to the effect "Not found". As per the decision of the Supreme Court even a letter with endorsement not available made by the postal authority cannot be said to be a letter duly served on the addressee; but in the present case even that

contingency does not arise because of the failure of the management to produce the registered cover of the postal receipt which would show that the management actually attempted to serve the letters on the worker. Therefore, I am of opinion that there is no valid service of the letters dt. 29-4-93; 26-6-93 and 12-8-93. When the bank has failed to show that they have made attempts to serve the letters and order on the worker by sending them by registered post they cannot contend that the worker has to send his leave application by registered post and the letters sent by him under certificate of posting were not received by them. The management does not dispute that there was no charge sheet, or enquiry for unauthorised absence of the worker. They also did not dispute that notice pay and retrenchment compensation has not been paid. According to the management as per the terms of the bipartite settlement the worker who has absented himself for 90 days or more consecutive days is deemed to have no intention of joining duties and all that the management is to do is to give a notice to his last known address calling upon the employee to report for duty between the 30 days of the notice and that unless the employee reports for duty within 30 days or gives a satisfactory explanation for his absence he is deemed to have voluntarily retired from the bank's service on the expiry of the same notice and in the present case also the worker who has absented himself for more than 90 days was given 30 days notice and yet he did not join duty and therefore, he is deemed to have voluntarily retired from bank's service and therefore, the order dt. 12-8-93 has been communicated to him. The worker challenges clause 16 of the bipartite settlement contending that it is against the Constitution, provisions of Industrial Disputes Act and Provisions of Contract Act. I am of opinion that at present we need not go into the question whether the said clause is against the said provisions. Suffice it for us to observe that the said clause 16 of the bipartite settlement provides that if the management is satisfied that the employee who has absented for more than 90 days unauthorisedly have no intention of joining duty it is enough if a notice giving 30 days time to the employee to report for duty is given and when he fails to report for duty within the stipulated period or fails to give a satisfactory explanation the employee will be deemed to have voluntarily retired from the bank service on the expiry of the said notice. This clause 16 provides for 30 days notice and it means that notice should be served on the worker to enable him to report for duty within the stipulated period or gives an explanation stating the reasons for his inability to join the duties within 30 days. The words "Giving the notice to the employee's last known address" stated in this particular clause 16 of the bipartite settlement contemplates the notice only to enable the employee to comply with the notice and it cannot be done when the notice being actually not served on the employee. Giving a notice therefore, is not an empty formality to hold that the employee has opted for cessation of employment of the bank. In that view I am of opinion that the decision of the management of the Bank that the workman has voluntarily opted for cessation of employment as per the bipartite settlement and therefore, is deemed to have voluntarily retired from service cannot be appreciated. It is only because of this decision of the bank the name of the worker has been removed from the rolls of the Bank. Removing the name of the employee from the rolls of the establishment without a charge, or enquiry or notice or retrenchment compensation is not accordance with the Provisions of the Section 25-F of the I.D. Act. Therefore, I hold that the action of the management of Indian Bank, Cuffe Parade, in treating the service of Shri. Ramdas Nikam as voluntarily cessation of employment w.e.f. 26-7-93 as per the bipartite settlement dt. 10-4-89 is not justified and therefore, the workman is entitled to an order of reinstatement with back wages and other benefits.

5. In the result an Award is passed as follows:

The action of the management of India Bank, Cuffe Parade in treating the service of Shri Ramdas Nikam as voluntary cessation of employment w.e.f. 26-7-93 as per the bipartite, settlement dt. 10-4- 89 is not justified and therefore, the workman is entitled to an order of reinstatement with back wages and other benefits.

C.V. GOVERDHAN, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1699.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/355/91-आई.आर.(बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O.1699.—In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/355/91-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 12 of 1992

Parties : Employers in relation to the management of UCO Bank.

AND

Their workman.

PRESENT :

Mr. Justice A. K. Chakravarty. . . . . Presiding Officer.

APPEARANCE :

On behalf of management : Mr. H. R. Khan, Legal Retainer of the Bank.

On behalf of workmen : Mr. D. P. Roy, President of the Union.

STATE : West Bengal INDUSTRY : Banking

AWARD

By Order No. L-12012/355/91-IR(B-II) dated Nil the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of UCO Bank in not giving promotion to Sh. D. N. Sikdar is justified ? If not to what relief the workman is entitled to ?"

2. Instant reference has arisen at the instance of All India United Commercial Bank Staff Federation (in short, the union) for denial of promotion to one D. N. Sikdar, an employee of the UCO Bank.

3. Union's case, in short, is that the concerned workman, D. N. Sikdar was appointed in the UCO Bank as a watchman in the subordinate cadre on 27th June, 1978 and was posted at Calcutta Main Office. Thereafter he was transferred to different branches of the bank as the watchman-cum-peon. The procedure for promotion from sub-staff to clerical cadre are laid down in the promotion policy settlement made between the management of UCO Bank and the representatives of the workman from time to time. The union alleges that the name of the concerned workman should be recorded in the common seniority list of peon as the workman has a combined designation of watchman-cum-peon according to paragraph 5.7(ii) of the promotion policy agreement dated 13th April, 1988. The Bank did not recorded the name of the concerned workman in the common seniority list in violation of the aforesaid provision. It is alleged that due to such illegal act of the management the concerned workman isbeing deprived from getting higher functional allowance for no fault of his own. It is also alleged that the concerned workman is also eligible for promotion to clerical cadre from subordinate cadre as he has passed the "Prabeshika" examination from Deogarh Hindi Vidyapith in 1989 which is equivalent to SLC examination or Matriculation examination. As per promotion policy, subordinate staff who have passed SLC or Matriculation examination shall be eligible for promotion. The union has also alleged that as an ex-serviceman, according to paragraph 8.2 of the promotion policy, the concerned workman is eligible to get two years' weightage for completion of 16 years service in the Army after rendering three years service in the bank. The union accodingly prayed for promotion of the concerned workman to the clerical cadre from subordinate cadre on account of his passing the SLC examination and for giving him due weightage of service for counting of seniority.

4. The management of UCO Bank filed a written statement, alleging, inter alia, that due to his recorded designation as watchman, he used to officiate in higher functional allowance bearing posts, namely, Daftary, Head Peon etc. as per clause 5.7.2 of the promotion policy agreement, 1988 read with point No. 6 of Head Office circular No. CHO/PAS/16/88 dated 15-7-1988. The management accordingly alleges that his appointment was only as a "Watchman and he has no right to demand inclusion of his name in the seniority list of staffs having combined designation. The bank also denied the claim of the union that the concerned workman is otherwise eligible to get promotion to the clerical cadre for the ground of passing the "Prabeshika" examination from Deoghar Hindi Vidyapith in 1989 which is equivalent to SLC examination. The matter was brought to the notice of the Government of India which informed the bank that passing of "Prabeshika" examination from Deoghar Hindi Vidyapith cannot be considered as equivalent as SLC for employment/ promotion in the bank. The management admitted that the concerned workman is eligible to get two years weightage as per promotion policy of the bank. Management also alleged that on different occasions the concerned workman appeared in the promotion test, but failed to qualify himself in the same. Management has accordingly prayed for dismissal of the claim of the union.

5. In its rejoinder, the union merely reiterated its case as made out in the written statement.

6. Heard Mr. H. R. Khan appearing on behalf of the management. Mr. D. P. Roy, representative of the union was not present at the time of argument even though he appeared for the union upto a certain length of time. Both sides produced certain documents and two witnesses were examined on behalf of the union and one for the management.

7. The main grievance of the concerned workman is that though he is entitled to promotion in the clerical cadre, the management is intentionally refusing to give him such promotion. It appears from Ext. W-1 that he was appointed as a watchman. From ext. W-2 it appears that he was posted as a watchman-cum-peon. One of the reasons which promopted the bank not to include his name in the seniority list of peon is that he was not appointed as a peon. It is true that he had to do other works of peon apart from doing the work as a watchman, but that does not change the nature of his work as a watchman. Be that as it may, the main grievance of the workman is that though he has passed the "Prabeshika"

examination from Deoghar Hindi Vidyapith, still his case was not considered for promotion. The management has alleged that the Government of India refused to recognise the passing of such examination as equivalent to passing of SLC examination which is one of the basis of promotion in terms of the promotion policy. The agreement on promotion policy is marked Ext. W-9 in this case. it appears from Ext. W-10 that passing of "Prabeshika" examination from Deoghar Hindi Vidyapith is not sufficient for fulfledged recognition. The management was therefore justified in not recognising such certificate for the purpose of promotion.

8. It however appears from the evidence of the concerned workman that he has subsequently passed the I.A. examination of the Patna University. MW-1, Parimal Roy who is the Assistant Chief Officer in the Personnel Dept. Zonal Office at Calcutta of the bank has stated in his evidence that in 1996 the bank invited applications from two categories of candidates who have passed the matriculation examination or having higher qualification while the second being those candidates who have not passed the School Final Examination. In response to that notice the concerned workman applied as first category candidate as he has passed in the meantime the I.A. Examination of Patna University in 1991. The first category of candidate are not to sit for any examination, but their seniority is fixed on promotion on the basis of their date of joining, weightage, qualification etc. He also stated that due weightage in the service was given to the concerned workman because of his military service. It will further appear from his evidence that all the employees who obtained promotion on the basis of the aforesaid notification got their promotion on 9-5-1997 and the concerned workman also got his promotion on the same date though his seniority was fixed at a much higher level because of weightage and other consideration.

9. The concerned workman having thus already obtained his promotion alongwith weightage and the reference being based on the belief that such promotion had not been given, no further discussion in this matter is necessary.

10. The subject matter of the reference having thus become *non-est* by the action of the management by grant of promotion on the concerned workman no further relief shall be available to him.

11. The reference is disposed of accordingly by this award.

Dated Calcutta, the 7th May, 1999.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1700.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/356/94-आई.आर.(बी.-II)]

सनातन, डैस्क अधिकार

New Delhi, the 19th May, 1999

S.O.1700.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/356/94-IR(B-II)]

SANATAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 14th May, 1999

Present : Justice R. Ramakrishna, Presiding Officer

C.R. No. 140/1997

I Party :

The General Secretary
Syndicate Bank Staff Association
Anooradha Building, S. C. Road,
Bangalore-560 009

II Party :
The Dy. General Manager
Syndicate Bank Z. O.,
Punja Building, Lal Bagh,
Mangalore-575 003

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No.L. 12012/356/94-IR(B.II) dated 12th May, 1996 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Syndicate Bank, Mangalore in imposing the punishment of stoppage of two increments with cumulative effect on Shri M.P. Talakeri

Clerk, vide their order dated 31-5-1991 is legal and justified? If not, to what relief is the said workman entitled?"

2. This dispute is espoused by the General Secretary, Syndicate Bank Staff Association, Bangalore. The concerned workman is Shri M.P. Talakeri. At the relevant point of time he was working as Clerk at Divisional Office, Hubli. The charge sheet dated 8-11-1985 was issued to him, which runs to 5 pages, of various misconduct committed by him. The charges in brief are that this workman while working as an attendant at Horti branch connived with the then manager Shri V. G. Kuratti of Horti branch, Shri K.B. Bhaskaraiah, the then Farm Representative, Shri H.K. Hegdeyal, the pigmy collection agent, Shri P.S. Talakeri, is his father. He has obtained signatures/Left hand thumb impressions of his family members/other poor uneducated people of Horti village on the relative loan applications and issued withdrawal slips in their names by filling the same by him and handed them over to Shri V. G. Kuratti to enable him to sanction loans under IRDP scheme and received the amount directly on behalf of the loanies and thereby he was committed gross misconduct of doing acts prejudicial to the interest of the Bank.

3. The enquiry which was commenced at the earliest point of time was finally concluded on 21-8-90. The enquiry report which held against him, was accepted by the management and proposed punishment of dismissal.

4. Enquiry officer on the basis of the evidence placed before him held that this workman is guilty of two charges and with regard to other charges he held him not guilty and also he stated he is the victim of circumstances. It is represented that the manager who was incharge of that bank was dismissed from service.

5. However on the explanation of this workman the disciplinary authority has taken a very lenient view and in the place of proposed punishment of dismissal it is substituted for stoppage of next two increments with cumulative effect.

6. It is to be noted at this stage that the first party was not inclined to challenge the validity of the domestic enquiry. His submission is noted and the domestic enquiry was held fair and proper as it relates to the procedural aspect of the matter.

7. Shri Alse, General Secretary, who is representing the workman submits that the punishment now imposed is too harsh which requires reconsideration. The basis to make such submission is that the evidence of CBI officer who investigated this matter is not conclusive as he expressed some doubt.

8. This doubt connected to the fact of getting any monetary benefit through this transaction by this workman. It is crystal clear that he has indulged all his family members to get this loan and he also persuaded many illiterate and ignorant persons. Therefore we do not know whether they have enjoyed the benefit of those loans. Admittedly due to several factor the enquiry was continued and concluded in about 5 years.

9. Since the General Secretary is unable to point out any perversity in the proved misconduct made against this workman the report has to be accepted in toto. The misconduct is grievous one but the disciplinary authority has taken a lenient view and the workman should thank himself for this good gesture extended to him by the disciplinary authority.

10. In view of these facts and circumstances the second party are justified in imposing the punishment of stoppage of two increments with cumulative effect to the first party. w.e.f. 31-5-1991. The reference is answered accordingly.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 14th May, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ. 1701.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12012/431/90-आई.आर.(बी.-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O.1701.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 19-5-99.

[No. L-12012/431/90-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 42 of 1991

President, Central Bank of India Employees Union Haryana, 129 Lal Kurti Ambala Cantt.
.....Petitioner

Vs.

Regional Manager,
Central Bank of India,
427/A, Kumhar Mandi,
Ludhiana.

Representatives :

For the workman : None

For the management : Shri S.L. Batta

AWARD

(Passed on 16th March, 1999)

The Central Govt. Ministry of Labour vide Notification No. L-12012/431/90-I.R. (B. 2) dated 5th April, 1991 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Regional Manager, Central Bank of India, Ludhiana to not paying CCA to Sh. Balwant Raj, Armed Guard, w.e.f. 16-12-87 is legal and justified? If not to what relief the concerned workman is entitled?"

2. Despite several notices none has put up appearance on behalf of the workman. It appears that workman is no longer interested to pursum with the present reference. In view of the above, the present reference is returned to the appropriate Govt. for want of prosecution.

Chandigarh
16-3-1999

B. L. JATAV, Presiding Officer

नई दिल्ली, 19 मई, 1999

का.आ.1702.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था।

[सं. एल-12013/16/98-आई.आर.(बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 19th May, 1999

S.O.1702.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 19-5-99.

[No. L-12013/16/98-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT BANGALORE

Dated 7th May, 1999

PRESENT : JUSTICE R. RAMAKRISHNA PRESIDING OFFICER

C.R. No. 104/1998

I Party

The Secretary
Canara Bank Employees Union,
J. C. Road,
Bangalore-2

II Party
The Dy. General Manager
Canara Bank
M. G. Road,
Bangalore-1

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial disputes Act, 1947 has referred this dispute vide order No.L. 12013/16/98-IR(B.II) dated 14-12-1998 for adjudication on the following schedule.

SCHEDULE

"Is the Management of Canara Bank justified in recovering Rs. 12,500/- from Smt. Prema Adiseshan to make up the losses to the Bank? If so, to what relief the said workman is entitled?"

2. This dispute is referred to this Tribunal at the instance of first party. It looks, that the Secretary of the Union espoused the case of the workman.

3. After receipt of the reference notices are issued for both parties by ordinary post. This notices are served. Though it is obligatory on the part of the first party to assist this tribunal for expeditions disposal of the dispute the has not cared to participate in the dispute. Infact a registered notice also issued and the same was duly served.

4. When the case is called today, the first party has not appeared. Since the workman is represented by a Secretary of the Union a duty is casted to him to do all necessary things to the benefit of the workman for whom he is representing. He deliberately flouted the mandatory provisions contained under Rule 10(b) of the Rules.

5. In view of these circumstances the reference is rejected.

(Dictated to the stenographer, transcribed by her corrected and signed by me on 7th May, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 मई, 1999

का.आ.1703.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैरीसन इंजीनियरिंग (पी) (आई) आर. एण्ड डी ईस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-99 को प्राप्त हुआ था।

[सं. एल-14012/41/93-आई.आर.(डी.यू.)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 28th May, 1999

S.O. 1703.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garrison Engineering (P) (I) R&D East and their workman, which was received by the Central Government on 28-5-99.

[No. L-14012/41/93-IR(DU)]

B.M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT BANGALORE

Dated 18th May, 1999

PRESENT : JUSTIC R. RAMAKRISHANA

PRESIDING OFFICER

C. R. No. 82/1994

I PARTY	II PARTY
Shri K. Muniraju S/o Late C. V. Krishnappa, Kaverinagar, Whitefield Road, Mahadevapura Post, BANGALORE-560 009.	The Garrison Engineer (P) (I) R & D East, DRDO Complex, C.V. Raman Nagar, Post, BANGALORE-560 093.

AWARD

1. The Central Government by exercising the powers conferred by claude (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial disputes Act. 1947 has referred this dispute vide Order No. L-14012/41/93-IR(DU) dated 3-10-94 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Garrison Engineering (P) (I) R &D East, Bangalore over refusal of employment to Shri K. Muniraju and treating the appointment order issued to Shri Muniraju as cancelled is proper, legal and justified? If not, to what relief the workman concerned is entitled?"

2. The subject matter relates to an officer of appointment on 29th October 1987 in the second party to the post of Chowkidar in M.E.S.

3. The second party is a Military establishment. The first party was selected to the post of Chowkidar in the interview held on 13-10-1983. An appointment order was issued as per Ex. M-2 dated 29-10-1987 and he was asked to report for duty on or before 15-11-1987. He was also asked to intimate regarding his acceptance or otherwise of the offer of appointment on the conditions stipulated in the said order.

4. After this stage the second party contended that the first party has not reported for duty. The contention of the first party is that due to sickness he was not able to report for duty till 28-2-1988.

5. The averments made in the claim statement by the first party is that after receiving the appointment order he has reported to duty on 14-11-1987 and produced all the necessary certificates. After reporting to duty he has fell sick and he could not attend to his duty due to his prolonged sickness till the middle of February 1988. After recovery he went with fitness certificate but he was not allowed to work. Due to their assurance he was visiting now and then but he was not offered his job. Therefore he raised a conciliation before the Assistant Labour Commissioner. The directions given by the Assistant Labour Commissioner to reinstate this workman was considered by the second party but after waiting for 8 months they did not agree to the suggestions made by Assistant Labour Commissioner. Therfore he has prayed for re-instatement, backwages and other benefits available under law.

6. The second party in their counter statement contraverted the averments made in the claim petition in total. According to the second party persuant to the order of appointment the first party with all testimonials approached on 13-11-1987. After putting up all the documents to the Garisson Engineer on the same day he was asked to report for

duty on 15-11-1987. He did not report on 15-11-87. The second party issued two letters dated 27-11-87 and 7-1-88 to report for duty but there was no response. Since he was failed to report for duty it was assumed that he was not interested to take up the appointment. Meanwhile the local recruitment sanction for 1987-88 had also automatically stood cancelled due to lapse of time.

7. It is further contended that the first party who did not made any attempt to report for duty nor sent any reply to the letters sent earlier has sent a legal notice dated 29-8-92 directing the second party to appoint him within 7 days from the date of the notice. Thereafter he raised dispute before the Assistant Labour Commissioner where the second party also participated and submitted the above facts. However on the instructions of the Assistant Labour Commissioner (C) to consider the case of the first party sympathtically the matter was referred to the Chief Engineer, Head Quarters, Southern Command, Pune through the Zonal Chief Engineer, R & D, Secunderabad had after due consideration he turned down the petition of the first party workman due to non-existence of local recruitment sanction for the period 1987-88 and further due to the abnormal delay in submission of the claim petition.

8. The averments also met by para wise comments.

9. Though the schedule to the reference is a substantial issue to decide in this dispute but my learned predecessor framed a point for consideration.

> "Whether the claim of the first party about their refusal of employment by the second party is true and in accordance with law?".

10. The first party was directed to lead evidence. The parties placed their respective evidence during the 1st week of 1999.

11. The first party deposed that he has reported for duty on 14-11-87 and actual performance of work on 16-11-87 as 15-11-87 was a Sunday. Except the oral testimony of the first party there is no corroboration to this fact. Further case made out by him is that he was ill and took treatment at Government Hospital, Krishnarajapuram. He went to report for duty on 28-2-1988 along with medical certificate. He was not taken for duty though on oral assurance. He has visited the second party for about 15 times.

12. He has denied the suggestion of not joining the duty on 14-11-1987. He has admitted of having received the letters 27-11-87 and 7-1-88. He has denied the suggestion except sending legal notice after 4 years he did not made any efforts to report for duty.

13. MW-1 for second party gave the evidence as it relates to their defence. It is his evidence that a direction was given in Ex. M-2 to report for duty on 15-11-87. Instead of that date the workman came on 13-11-87 and submitted a letter Ex. M-3. He has also produced all necessary documents which he was asked to bring to report for duty. Thereafter he advised to report for duty on 15-11-1987. He has not reported to duty on that date nor intimated for not joining duty on that day. Therefore the management have sent a letter dated 21-11-87 as per Ex. M-4. Since there was no reply they have sent one more letter Ex. M-5 dated 7-1-88 by RPAD requesting the workman to report or send the reply before 18-1-88. After about4 1/2 years he has sent a legal notice as per Ex. M-6 which was replied as per Ex. M-7. Thereafter a conciliation was raised where the second party participated. Then on the suggestion of the Regional Labour Commissioner (C) an effort was made to contact the office at Pune to provide employment to the first party. But due to the reasons stated in Ex. M-8 the higher authorities have rejected claim of the first party.

14. On going through the pleadings and the related evidence it is clear that the first party after approaching the second party on 13-11-87 has not approached them till he has issued a legal notice for his appointment. He has not denied the receipt of two letters sent by second party calling him to report for duty. He has also not disputed the fact of not sending any reply to their letters. His contention that he was ill and he was hospitalised is not proved. Infact the higher authorities at Pune have once again considered any scope for providing the employment after a lapse of 5 to 6 years but due to the reasons considered thereon the first party was not provided the job which was offered to him during 1987.

15. Therefore it is crystal clear that the first party on his own wrong made himself disentitled for the job offered to him during 1987 There is no material that with any motive second party deprived the first party to report for duty and to enjoy as a Chowkidar.

16. In these circumstances I do not think that any interference can be made to give vent to the case made by the first party and in the result. I make the following Order.

ORDER

The Second party are justified in refusal of employment to the first party in the facts and circumstances of this case. The reference is answered accordingly.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 18th May, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 25 मई, 1999

का.आ. 1704.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-5-1999 को प्राप्त हुआ था।

[सं. एल-12012/310/96-आई.आर. (बी-II)]

सी. गंगाधरण, डैस्क अधिकारी

New Delhi, the 25th May, 1999

S.O. 1704.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 24-5-99.

[No. L-12012/310/96-IR(B-II]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present ;—Sri C. V. Raghavaiah, B. Sc., B. L.,
Industrial Tribunal-I.

(Dated this the 9th day of March, 1999)

INDUSTRIAL DISPUTE NO. 52 OF 1997.

Between :

The General Secretary, Indian Bank,

Employees Association, C/o Indian Bank,

Zonal Office, 5-9-20/A,

Secretariat Road, Hyderabad. Petitioner.

And

The Chief Manager, Indian Bank

Zonal Office, 5-9-20/A,

Secretariat Road,

Hyderabad. Respondent :

APPEARANCES :

Sri K. Ashok Rama Rao, Advocate for the Petitioner.

M/s. P. R. Prasad and C. V. V. Prasad, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L—12012/310/96/IR (B-II) dated 18-8-1997 referred the following Industrial Dispute under Section 10 (1) (d) and sub-Section 2(A) of Industrial Disputes Act, 1947 for adjudication to this Tribunal :

> "Whether the action of the management of Indian Bank, Hyderabad in terminating the services of Smt. Yadamma without following the provisions of Section 25-F of the I. D. Act, 1947 is legal and justified? If not, to what relief the said workman is entitled ?"

Both parties appeared through their counsel and filed their respective pleadings.

2. The General Secretary of the petitioner-union filed the claims statement contending as follows : The worker Smt. Yadamma who was working in the Darulshafa Branch in Hyderabad, of Respondent Bank since 15-11-1985, was terminated from service on 16-6-92. While terminating her services, she was not served with any show cause and no disciplinary action was taken by the Management. She approached the management for regularisation but in vain. Hence she filed Writ Petition No. 9421/87 before the Hon'ble High Court of A. P. and in W. P. M. P. No. 12527/87 the Hon'ble High Court directed the Management to interview her along with other candidates sponsored by the Employment Exchange for the post of Sweeper in the said Branch. In turn the Bank interviewed her on 13-12-89 i.e. 2 1/2 years after court order that too after she produced Memo dt. 6-12-89 stating the WP is no more on the file of Hon'ble High Court. Even after two years from interview i.e. in 1991 the management did not regularise her services. Hence Smt. Yadamma made representation to Management, the management refused to regularise her services. Thus the management violated the Section 25F, 25G and 25H of I. D. Act. She was in the services of the Bank uninterruptedly between 15-11-1985 and 16-6-92 and worked for more than 240 days in a calendar year. The petitioner prayed for her reinstatement into service from 15-11-1985.

3. The Respondent filed a counter resisting the claim petition filed by the petitioner. It contended that the worker Smt. Yadamma was engaged only on casual wages for a certain period only i.e. in the years 1985 and 1986 as a part time sweeper. She was engaged only for an half-an-hour in a day. Therefore she was not discharging the regular duties of sweeper. The question of initiating disciplinary proceedings would arise only in case of regular staff and therefore her contention is wholly misconceived. As per the directions of the Hon'ble High Court, Smt. Yadamma was interviewed along with other candidates sponsored by the Employment Exchange for the regular post of Sweeper. But nobody was selected in the interview as they are not found fit. It contended that from 1987 to 1991 she did not turn up to the office at any point of time. After a lapse of more than 4 years, again she approached the Bank in the year 1991 for casual engagement. She was engaged for a period of 10 days in 1991 and in 1992 she was engaged on casual basis for a maximum of 120 days. Therefore the total number of days she was engaged during two calendar

year i.e. in 1991 and 1992 is only 131 days. Since she was not engaged for 240 days or more in any calendar year and her engagement is not continuous, she is not entitled for any claim under the provisions of I. D. Act. Therefore from 1992 till date, she was never on the rolls of the Bank nor she was engaged on casual basis at any point of time. Therefore her claim is hopelessly barred by limitation due to latches on her part. Therefore Smt. Yadamma has not acquired any rights whatsoever for absorption particularly when she never attended the office from 1987 to 1991 and from 1992 till date. Hence her claim that she worked for more than 240 days from 15-11-85 to 16-6-92 is not correct. The records do not show that her engagement was continuous as claimed. It prayed for dismissing the claim petition.

4. The respondent filed additional counter by way of a petition under Section 11 of I. D. Act, contending that the union which is espoused the cause of Smt. Yadamma, cannot represent her case as she is neither an employee of the bank nor a member of the petitioner's union. It also contended that it can espouse the cause of the regular employees who are paying monthly subscription fee to the union. In the absence of it in the case of Smt. Yadamma, the union is not entitled to espouse her case. Therefore the dispute itself is not maintainable and the same is liable to be dismissed as the petititioner has no locus stand to represent her case. It further contended that the Hon'ble High Court by disposing the Writ Petition filed by Smt. Yadamma, directed the Management to interview her for the post of sweeper. Hence the present claim for her absorption is mainly on the basis of period of her engagement prior to the date of interview. The Management interviewed Smt. Yadamma but she was not selected for the said post. Hence the provisions of Industrial Disputes Act including Section 25F has no application as she was not a workman within the meaning of Section 2(s) and she was not engaged for more than 240 days in any calendar year Hence on this ground alone the reference is liable to be rejected and the claim petition filed by her may be dismissed.

5. The worker Smt. Yadamma filed a rejoinder to the above additional counter contending that she has every right to agitate the matter under I. D. Act through the recognised union i. e., petitioner union which is a recognised union, as she was an employee of the Bank. The respondent cannot take some flimsy grounds at this juncture which is not permissible under any law. She contended that the respondent has taken undue advantage of her illiteracy in order to just pacify her they have given her a call letter dt. 13-12-89 inviting her for an interview that too after withdrawal of her Writ Petition. Even after conducting the interview they have not selected her inspite of the assurance given at every point of time whenever she asked the Bank to regularise her services as a sweeper. But in the instant case she was deprived the privilege of getting regular services wherein interview was conducted for other branch and one Bharathi Bai who was interviewed at that Branch was given a posting to the Branch at Darulshafa where she was working since 1985. According to her the manner in which the Bank acted, is highly illegal and without following the rules and procedure.

6. She contended that she joined as a sweeper at the Darulshafa Branch and worked right from the start of banking hours till the closure of the Bank. She was sweeping, cleaning the desks and getting water for drinking purposes from far of place and assisted the branch in giving ledgers and other papers and miscellaneous work. She further contended that she has been continuously working right from 15-11-1985 till her termination and hence the allegation that she worked on casual basis is incorrect. She contended that Bank is having a carpet area of 15,000 sq. ft. and on the basis of this one can assess how much time it will take for sweeping the entire area and cleaning the desks. This fact will falsify that she was working for only half an hour a day and she worked for more than 10 hours a day in the Bank. Hence she is entitled for regularisation of her services.

7. In suport of their contentions the petitioner examined the concerned worker Smt. Yadamma as WW1, her mother Smt. Y. Maisamma as WW2 and her sister K. Anasuya as WW3 and Exs. W1 to W24 are marked on their behalf while the respondent examined the then Branch Managers of Darulshafa Mr. B. Venkateswara Rao and Abdul Basik, under whom Smt. Yadamma worked, as MW1 and MW2 and Exs. M1 to M6 are marked through MW2, and Chief Manager of Indian Bank Mr. N. K. B. as M W3 who spoke to fact of recruitment procedure for regularising the services of Sweepers.

8. On the above contentions, the following points arise for consideration :

(1) Whether the worker Smt. Yadamma who was examined as WW1 in this case was terminated from services as full time sweeper by the Management with effect from 16-6-1992 if so the said termination of worker is justified and legal ?

(2) Whether the worker is entitled for reinstatement into services or regularisation of services as permanent sweeper ?

(3) Whether the petitioner-union has no locus standi to raise this dispute ?

(4) Whether the claim of the worker became stale as such the reference is not maintainable ?

(5) To what relief the worker is entitled to in this reference ?

9. POINTS 1 & 2 : The petitioner-union is seeking reinstatement of worker Smt. Yadamma WW1 into service of the respondent Bank as sweeper on the ground her services were terminated in violation of provisions of Section 25FF of the I.D. Act though she has worked from 1985 to 1992 i.e. 15-11-1985 to 16-6-1992 continuously without any remark and was assured by the management from time to time that her services will be regularised, for continuity of service and other

attendant benefits. According to the respondent, the worker Smt. Yadamma is not however entitled to any relief.

10. In support of their contentions, the concerned worker Smt. Yadamma herself examined as WW1, her mother Maisamma as WW2 and her sister Anasuya as WW3 and they filed Exs. W1 to W24 while the respondent examined MW1 to 3 and marked Exs. M1 to M6.

11. The admitted facts as revealed from the evidence placed on record are briefly stated as follows : There was a vacancy of sweeper in Darulshafa Branch, Hyderabad of Respondent-Bank during the years 1985 to 1992. MW2 Mr. Abdul Basik worked as the Manager of the said Branch from January, 1988 to April, 1992, while MW1 Mr. B. Venkateswara Rao worked as Manager in that branch from 26-4-1992 to December, 1995. MW3 is the Chief Manager of Indian Bank Zonal Office. WW1 Smt. Yadamma concerned worker, worked as Sweeper in the said Branch during the period of above vacancy in the sweeper post as full time sweeper from 1985. According to WW1, she worked without break of service, from 15-11-1985 to 16-6-1992 while according to the respondent, she worked in the year 1985-86 and again in the year 1991-92. No appointment order was given to WW1 at the time of her engagement and similarly no termination order given. A regular permanent sweeper by name Bharati Bai was posted in the above Branch Office on 16-6-1992. Eversince WW1 is not in service of the Branch. As the service of WW1 was not regularised and as she was not called for interview along with other candidates sponsored from Employment Exchange, she approached the Hon'ble High Court by filing Writ Petition No. 9421/87 and WPMP No. 12527/87 for interim directions. Under Ex.W2 order the respondent Bank was directed to consider the claim of the petitioner - Smt. Yadamma along with other employment exchange candidates for the post of sweeper in the said Branch at Darulshafa Sultanpura, provided she fulfil the required qualifications and satisfy other conditions of eligibility, pending disposal of the writ petition. Pursuant to the said directions under Ex.W2 in the said WPMP on 14-7-87 Smt. Yadamma was called and interview along with the candidates sponsored by the Employment Exchange in the year 1989 i.e. on 13-12-89 but she was not selected. In the meanwhile Writ Petition was disposed off as borne out by Ex.W3 Memo dt. 6-12-89 written by the Advocate to Smt. Yadamma stating that the W.P. No. 9582/87 is no longer pending on the file of Hon'ble High Court.

12. The petitioner-union entered into an agreement with the management with regard to the regularisation of services of sweepers in the year 1993. As per the said settlement, the management can appoint sweepers temporarily for a period of 6 months pending recruitment of regular sweepers and during the said period, the union cannot raise any demand for their regularisation. Ex. M3 is the said settlement dated 28-7-1993. In the year 1990 the management has regularised the services of some of the temporary (appointed) sweepers as one time measure as borne out by Ex.W21 letter dt. 14-9-90. But WW1 Yadamma was not regularised under the said proceedings.

13. As services of WW1 were not regularised though some of the persons appointed subsequent to her were regularised under Ex.W21 letter/proceedings, and as her services were terminated she gave Ex.W5 representation dt. 31-7-1992 which is same as Ex. M4 to the Zonal Manager marking copy to the Branch Manager which was duly forwarded by the Branch Manager under Ex. W6 covering letter dt. 6-8-92. A representation was also given on her behalf by the owner of the house in which the Bank is situate as Smt. Yadamma was working earlier as Maid Servant of the said house owner. Ex.W7 is the said representation sent by the house owner to the Chairman of the Indian Bank. On receipt of the said representation, the Zonal Officer addressed Ex.W9 letter dt. 12-9-1992 to the Regional Manager to send Bio-data of WW1. The Branch Manager sent Ex.W8 letter dt. 28-10-1992 to the Zonal Office pertaining to Ex.W8 representation sent by landlord that WW1 attended the interview but she was not selected. The said reply was sent pursuant to Ex.W9 letter also. The Branch Manager also sent Ex.W10 letter dated 28-11-1992 to Zonal Office stating that the interview for 17 candidates sponsored by the Employment Exchange for appointment of permanent sweepers may be fixed enclosing copy of list of candidates received from the local Employment Exchange.

14 As the request of WW1 was not considered and as there was no response from the management, she gave Ex.W11 representation dated 21-9-93 requesting for appointment as Sweeper and expressing that she is willing to work anywhere in Hyderabad city branches as sweeper on permanent basis. The Branch Manager sent Ex.W12 letter dt. 22-9-93 pursuant to Ex.W11 representation to the Zonal Manager furnishing the Bio-data of WW1 and stating that she worked in all for 492 days.

15. As no favourable orders received by WW1, she approached the petitioner union to espouse her cause before the Asst. Labour Commissioner. Ex.W1 is the representation given by the petitioner union to Asst. Labour Commissioner on 23-5-95. The management sent Ex.W13 letter dt. 28-9-95 to the Assistant Labour Commissioner giving the particulars of number of days WW1 worked from November, 1985 to June, 1992, and all the payments are made to her ranging from Rs. 2/- to 18/- per day. WW2 mother of WW1 also sent a representation to the Asst. Labour Commissioner under the original of Ex. W14, dt. 1-12-1995 that she never worked in respondent Bank. Earlier WW1 gave representation i.e. Ex.W15 dt. 24-9-94 to the Zonal Office to consider her case before approaching the Asstt. Commissioner of Labour. Copy of Ex.W15 was sent to the higher authorities and the same was received by them under Exs.W16 to W18 acknowledgements. The management has also filed Ex.W19 written brief before the Asst. Labour Commissioner disputing the claim of WW1 for her regularisation It is dated 8-8-1995. As both parties could not come to any mutual agreement, the conciliation ended in failure. Ex.W10 is the minutes of conciliation proceedings dated 30-11-1995. On the basis of representation

given by WW1, the Zonal Office called for certain information from the Branch Manager under Ex.W22 letter dt. 1-10-1993 and the Branch Manager sent Ex.W23 reply dt. 6-10-1993. Ex.W24 is the details of payments made to WW1 from 15-11-1985 to 14-6-1992 sent by the Branch Manager to the Zonal Office on 24-11-1992.

16. Ex.M1 is the circular dt. 30-9-1978 issued by the Government of India to all the Nationalised Banks with regard to the recruitment of sub-staff in Public Sector Banks as per which the list of candidates has to be sponsored by Employment Exchange. Ex. M2 is the instructions dt. 4-3-93 issued by the Dy. General Manager Personnel of the respondent Bank to all the Branches for engagement of persons during the leave vacancies of sub-staff and the norms to be followed Ex. M5 is the award dt. 16-4-1996 passed by this Tribunal in I.D. No. 32/95 relating to one Kasamma for her regularisation as part-time sweeper in the respondent-Bank while Ex.M6 is the copy of the judgement in W.P. No. 18998/97 and batch rejecting the claim for empanelment regularisation as sub-staff. It was filed by some sub-staff workers. WW1 Yadamma is not a party to the said proceedings.

17. It is contended on behalf of the petitioner Smt. Yadamma by the learned Counsel basing on the evidence of WW1 to WW3 and admissions elicited in the cross-examination of MW1 to M.W3 that Smt. Yadamma worked continuously from 15-11-1985 to 14-6-1992 without any break as temporary part-time sweeper on the assurance given by the successive Managers that her services would be regularised in due course and that she has worked for more than 240 days in a calendar year of 12 months preceding the date of her termination on 14-6-1992 and that though services of some of the temporary sweepers engaged subsequent to WW1, were regularised under Ex.W21 letter/proceedings. It is contended that Ex.W1 letter there is a settlement i.e., Ex.M3 for regularisation of temporary sweepers, the management did not regularise her services and on the other hand terminated her services in violation of provisions of Section 25-F of the I.D. Act. It is submitted further that the contention of the respondent-Management that the Smt. Yadamma did not work from 1987 to 1991 cannot be accepted as MW1 to 3 could not say in not WW1 Smt. Yadamma, who else worked during that period and also has not produced any record to rebut the evidence of WW1 that she worked continuously for the period from 1985 to 1992 though the burden squarely rests on the respondent as WW1 is an illiterate woman and not in possession of record of the Bank. He thus contended that the action of the management in terminating the services of WW1 is illegal due to non-compliance of Section 25-F of the I.D. Act as such she is entitled for reinstatement with all attendant benefits including the continuity of service etc.

18. The contention of the respondent on the other hand is that Smt. Yadamma was engaged on daily wage basis as part-time sweeper only during the year 1985-86 and thereafter she did not turn up till 1991 and again in the year 1991-92 she was engaged on daily wage basis and she never worked for 240 days in any calendar year much less prior to the date of her termination and that Section 25-F of the I.D. Act, is not applicable to WW1 as it is not the case of retrenchment within the meaning of Section 2(oo) of the I.D. Act but engagement and disengagement as per need and WW1 has no right to seek for regularisation as the recruitment procedure is laid down for appointment of part time sweepers and that as per the direction of the Hon'ble High Court she was called for interview in the year 1989 but she has not qualified herself and hence she could not be selected.

19. It is further contention that though the respondent did not file any record to show that WW1 did not work during the years 1987 to 1991 the records filed by WW1 would themselves speak to the said fact besides admissions elicited in the cross-examination of WW3 that she worked for some period during the absence of WW1 i.e. period of confinement of WW1. It is contended that in Ex. W5 representation given by Smt. Yadamma as early as in 1992 to the Zonal Manager and Ex. W7 representation made on behalf of Smt. Yadamma by the landlord would clearly show that during the years 1987 to 1991 the WW2 Maisamma mother of WW1 worked as sweeper, and her services were terminated as she attained the age of 60 years. According to the respondents the above documents would clearly dispute the claim of WW1 that she worked continuously from 1985 to 1992.

20. The respondent further relied on Ex. W13 reply given by the management to the Asstt. Labour Commissioner giving the details of the number of days WW1 worked during the years 1985 to 1992 and the wages paid to her. Ex. W19 the written brief made by the Management before the Asstt. Labour Commissioner, Ex.W23, Ex.W24 giving the details with regard to the number of days WW1 worked in support of its contention that WW1 did not work for 240 days in any calendar year or much less immediately preceding the date of her disengagement.

21. It has therefore to be seen with reference to evidence whether the parties proved their respective contentions.

22. There can be no doubt that generally burden of proving a fact rests on the party who asserts the existence of a fact. Hence it is for the workman or the petitioner-union to prove by satisfactory evidence that terminating her services amounts to retrenchment as it is settled that though all retrenchments is termination of service but all termination of services may not be 'retrenchment'. I however feel that after both the parties adduced evidence, the burden of proof pales into insignificance and Irrespective of burden of proof the party who is in possession of relevant document, fails to produce the same, an adverse inference has to be drawn against the said party. I however feel that in case of illiterate woman the burden of proof rests on the opposite party to prove that she is not entitled to relief prayed for an on her to prove her case as was held in the case of K. CHANDRAMMA vs. LABOUR COURT-I, HYDERABAD [1997(3) ALT 406] cited

by the learned counsel for the petitioner. Bearing the principles of law laid down in the above decision and also the principle of law after the trial of the case the burden of proof pales into insignificance i.e. after both the parties adduced evidence, i e., evidence on record has to be considered.

23 WW1 has no doubt stated that she worked as sweeper in the respondent-bank at Darulshafa Branch from 1985 to 1992 till the regular sweeper was appointed, on daily wages ranging from Rs. 2/- to 18/- per day that earlier to joining the services of the Bank, she was working as Maid Servant of owner of the Building in which the Bank is situated that she has been given assurances from time to time by the respondent bank Managers that her services would be regularised that she would be made permanent and that she was also informed that she should be get her name to be sponsored from the Employment Exchange she also stated that at no point of time her mother and sister who are examined as WW2 and WW3 worked in the respondent Branch during her absence. She also spoke to the factum of filing the Writ Petition and having been called for interview pursuant to the directions of Hon'ble High Court as borne out by Ex. W2 and her withdrawing the writ believing the assurance given by the Manager that she will be selected. But finally not being selected in 1989.

24. She also spoke about various representations made by her to the Zonal Office and Branch Manager for her reinstatement and as there was no response, she approached the union to raise a dispute before Asstt Labour Commissioner but it is ended in failure. She asserted that she worked without break continuously from 1985 to 1992.

25 WW2 who is no other than mother of WW1 corroborated the statement of WW1 by stating that she never worked in the respondent-Bank and her daughter alone worked in the Bank. WW3 who is no other than the sister of WW1 has however stated that she worked for a short period in the respondent-bank during the period WW1 gave birth to child and her sister alone worked in the bank from the beginning

26. The evidences of WW1 to 3 further showed that WW1 used to work for more than 8 hours per day that she used to sweep the premises and clean the tables and bring the water etc to the staff of Bank and do other miscellaneous work Thus the evidences of WW1 to WW3 if accepted would go to show that without break, WW1 worked in the Bank from 1985 to 1992 as rightly claimed in the claim petition and her mother never worked though her sister worked for temporary period during the period of WW1's confinement and she was working not less than 7 to 8 hours per day in the Bank.

26. The evidence of MW1 and 2 on the other hand showed that WW1 worked only in the year 1985-86 and again in the year 1991-92 and she did not work in the year 1987 to 1991 They also spoke to the recruitment policy with regard to the appointment of sweepers. It has however been elicited in the cross-examination of MW2 the post of sweeper is lying vacant from the year 1985 to 1992 till the regular sweeper was appointed in 1992 i.e. Bharati Bai was appointed as sweeper. The evidence of MW3 showed that WW1 was engaged only for 30 days during the year 1985, 233 days during the year 1987, 98 days during the year 1987, 10 days during the year 1991 and 121 days during the year 1992 and she did not work for 240 days in any year. Sri S.K. Bashir Ahmed who worked as Manager during the year 1985 when WW1 was engaged, was not examined. Their evidences further showed that Smt. Yadamma (WW1) was engaged only on daily wages basis due to administration exigency that branch manager is not entitled to appoint sweeper that Zonal Manager alone is competent and no assurance was given by any of the Managers that her services will be regularised and at the most she was engaged only for an half-an-hour to hours in a day in the Bank The evidence of MW1 further showed that during 1989 to 1991 WW1 did not work but WW2 and WW3 worked and he sent Ex. WW3 reply.

27. Thus the evidence of the above witnesses if accepted would go to show that WW1 did not work for 240 days in any calendar year much less continuously from 15-11-1985 to 14-6-1992. Of course the respondent has not produced the record maintained by the Bank to show that she did not work during the year 1987 to 1991 but somebody else worked. Naturally adverse inference has to be drawn in such circumstance and the case of WW1 Yadamma has to be accepted that she worked from 15-11-85 to 16-6-1992. The respondent however relying on the documents filed by WW1 herself in support of their contention.

28. Thus the oral evidence placed on record by the parties is conflicting as to for how many years WW1 was engaged as Sweeper and whether she worked continuously from 1985 to 1992 or not. Ex. W5 is the representation given by WW1 to the Zonal Manager after disengagement and it is dated 31-7-1992. It has been mentioned in the said representation that WW1 was engaged as sweeper temporarily in the Dharul Shafa Branch of the respondent Bank from 15-11-1985 on daily wages of Rs. 2/- upto 1987 with an increase in wages nominally and during the year 1986 for a short time, not even one month her sister (WW3) attended her duties. It is further stated that from July, 1987 she was forcibly denied to attend duty till last quarter of 1987 and after her repeated requests, her mother (WW2) was engaged as sweeper on temporary basis and during December, 1991, her mother was denied for services as she was over aged i.e. above 60 years. It is further stated that she (WW1) was called for interview in the year 1989 alongwith others but the result of the interview was not announced and surprisingly one Mrs. Bharati Bai has joined in the Bank on 16-6-92 as sweeper. It is further stated that during the period she worked as sweeper, she was not only sweeping the branch office but also fetching water even for drinking purpose. She finally stated that keeping the above services rendered to Indian Bank by her family all the years from 1985 to 1992 and taking her initial engagement into consideration from 1985 and her working in the branch

thereafter till 1992, she may be provided an employment i.e., the post of Sweeper on permanent basis.

29. I am of the view that the above representation given by WW1 cuts her case at the bottom as rightly submitted by the learned counsel for the respondent. It will disprove that her mother never worked in the above branch of the respondent-Bank. It will also disprove the evidence of WW2 mother of WW1 that at no point of time she worked in the respondent bank. The above representation clearly shows that WW1 worked on daily wage basis as Sweeper in the year 1985 to July 1987 that for a short period during the year 1986 her sister WW3 worked in her place and from July, 1987 to December, 1991 she was not engaged by the Bank for the purpose of sweeping but during that period her mother worked and she was disengaged on attaining the age of 60 years. In view of above categorical admission of WW1 in Ex.W5 representation, I feel that there is no need for the respondent to produce any record in proof of the fact that WW1 was not engaged during 1987 to 1991.

30. Ex. W7 is the representation said to have been sent on behalf of WW1 by the house owner who is also said to be Ex. M.P. The averments in the said representation are identical with the averments in Ex. W5 representation given by WW1 It would also show that only during 1985 to 1987 and again in 1991 and 1992 WW1 Yadamma was engaged as sweeper and from 1987 to 1991 her mother (WW2) was engaged as sweeper. Ex.W15 is another representation given by WW1 to the Zonal Manager and it is dated 24-9-1996. In the said representation also, it is mentioned that WW1 was appointed as Sweeper in Darul Shafa Branch on 15-11-1985 and served till 14-7-1987 and though direction was given by the Hon'ble High Court to consider her case for continuation, she was discriminated on the ground that she has not worked for 240 days while others who have worked for less 240 days have been regularised. It is further stated in the above representation that during the period she worked from 15-11-1985 to 10-12-85 she was paid daily wage of Rs.2/- from 11-12-85 to 6-3-86 at Rs.3/- per day, from 7-3-86 to 12-7-87 at Rs. 4/- per day and Rs.18/- per day from 17-12-1991 to 14-6-1992 which is in turn with Ex. M24 reply sent by M.W1. Thus these representations i.e. documents also dispute the case of WW1that she worked as sweeper continuously from 1985 to 1992.

31. Ex.W1 is the representation dt. 23-5-95 given by the union on behalf of WW1 to Asstt. Labour Commissioner. It would also go to show that WW1 worked only during the year 1985 to 1987 and again in 1991 and 1992. It is however further mentioned that though WW1 worked between 1987 to 1991 also payments are made in the name of her mother WW2 Maisamma though she never worked and again from December, 1991 the respondent started making payments in the name of WW1. Thus for the first time in Ex.W1 it has been belatedly mentioned that during 1987 to 1991 also WW1 was engaged as Sweeper but the payments are made in her mother's name which appears to be an afterthought. I am of the view that the said allegations are made by the union deliberately so that the petitioner may not be deprived of benefit of I.D. Act, as the union is expected to be conversant with the provisions of the Act.

32. Ex.W14 is the representation dated 1-12-1995 given by WW2 to the Assistant Labour Commissioner. It is mentioned in the said representation that during the year 1987 to 1991 also though WW1 worked as sweeper, the Bank authorities have taken her signature for payment of wages. Thus WW2 appears to have made the above averment to be in true with the averments in Ex.W1 representation given by the union.

33. I am of the view that much credence cannot be given to the averments in Ex.W1 and Ex.W14 representation given by the union and WW2 respectively as definite improvement in the case of WW1 was made in those representations over Exs. W5 and W7 representations given in the year 1992 and 1996 by WW1 and owner of the building in which bank is located. I therefore feel that Ex.W5, W7 and W15 representations would clearly disprove the case of WW1 that she worked continuously from 1985 to 1992.

34 I am of the view that Ex. W13, 19, 23 and 24 would clearly disprove the contention of the petitioner-union that WW1 worked for more than 240 days in a calendar year preceding the date of termination. Admittedly Exs. W5, W7 and W15 representations given by WW1 herself would clearly show that she did not work continuously from 1985 to 1992 but she worked in 1985 to 1987 in 1991 and 1992. There can also be no doubt that she has not worked continuously for one year. As per Section 25B(2) (b) (II) a person shall be deemed to have completed one year service if he worked for not less than 240 days in a calendar year preceding the date of his termination.

35. The period of 240 days to be counted backwards from 14-6-92 from which date she was not admittedly engaged or worked. If the service of a person who worked 240 days or more in a year preceding the date of termination, is terminated without complying with the provisions of Section 25F, the said termination would amount to illegal retrenchment and void abinitio entitling him/her of reinstatement with all attendant benefits as was held in the case of MOHAN LAL vs. MANAGEMENT OF M/S. BHARAT ELECTRONICS LTD. [1981(3) Supreme Court Cases page 225]. Ex. W13 is the letter dt. 28-9-95 sent by the management to the Assistant Labour Commissioner giving the particulars of number of days WW1 worked and wage paid to her. As per the said letter during the year 1985 she worked for 10 days in November and 20 days in December, i.e. for 30 days, from January, 1986 to December, 1986 she worked for 233 days i.e. 22 days in January, 1986, 21 days each in February and March, 1986, 22 days in April, 1986, 24 days in May, 1986, 21 days in June, 1986, 22 days in July, 1986, 19 days in August, 1986, 3 days in September, 1986, 17 days in October, 1986, 20 days in November, 1986 and 21 days in December. 1986. During the year 1987, she worked

only 98 days i.e. 25 days in March, 1987, 19 days in April, 1987, 23 days in May, 1987 for 21 days in June, 1987 and 10 days in July, 1987. In the year 1991 she worked only for 10 days i.e. 10 days in December, 1991 and in the year 1992 she worked for 121 days i.e. 21 days in January, 1992, 25 days in February, 1992, 23 days in March, 1992, 18 days in April, 1992, 23 days in May, 1992 and 11 days in June, 1992. Thus from the above list, as deposed by MW3. Thus it is quite clear that the workman WW1 did not work for 240 days in any year in which she worked. As stated above, 240 days has to be counted back from 14-6-1992. But in such case the total number of days she worked would come only to 121 days, if 240 days counted back from 14-7-1991 to 14-6-1992.

36. Ex.W19 is the written brief filed by the Management before the Assistant Labour Commissioner it would also go to show that WW1 did not work for 240 days prior to the date of her termination. It is clearly stated that she worked only 233 days in the year 1986 but other details are not specifically mentioned. Ex. W23 is the reply dt. 6-10-93 sent by the Branch Manager i.e. MW1 to the Zonal Office with regard to number of days WW1 was engaged and wages paid to him. It has been duly proved by MW1. The number of days mentioned therein for which WW1 engaged in the year 1985 to 87, 91 and 92 exactly tally with the number of days WW1 was engaged in the year 1985 & 1987, 91 and 92 mentioned in Ex. W13.

37. Ex. W24 is another letter dt. 24-11-1992 addressed by the Branch Manager i.e., MW1 to the Zonal Office wherein it is also mentioned that WW1 was engaged from 15-11-1982 to 10-12-1985 on daily wage of Rs. 2/- from 11-12-85 to 6-3-86 on daily wage of Rs. 3/- from 7-3-86 to 12-7-87 on daily wage of Rs. 4/- and from 17-12-91 to 14-6-92 on daily wage of Rs. 18/- per day. It tallies with Ex. W13 with regard to the number of days WW1 was engaged and wages paid to her. It was also duly proved by M. W1.

38. Thus the above documentary evidence placed on record by the workman WW1 herself would amply corroborate the oral evidence of MW1 to MW3. They would clearly prove that WW1 did not work for 240 days in any year much less for 12 calendar months preceding the date of her termination. I find no reason to doubt the correctness of the number of days mentioned in Exs. W13, 23 and 24 and the period from Aug 87 to Nov. 91 was deliberately got left in these documents as suggested to MW1, as Exs. W5, 15 and W7 representations sent by WW1 as well her landlord at the earliest point of time would show that during the year 1987 to 1991 her mother was engaged as sweeper but not WW1 herself and due to old age her mother was disengaged.

39. I therefore conclude in view of the oral and documentary evidence placed on record that WW1 was engaged on daily wage basis, for sweeping the bank but not appointed as either as full time or part time sweeper that she did not work for 240 days preceding the date of her termination and that it is the case of disengagement but not termination and the interested testimony of WW1 to 3 and WW1 and to work at 7 or 8 hours per day cannot be accepted. Even if it is assumed that it is a case of the termination, it would not amount of retrenchment and even if it is case of retrenchment it would not amount to illegal retrenchment as she had not work for 240 days in a calendar year preceding the date of her termination. I am of the view that the provisions of Section-25F do not apply to the facts of this case in view of the above circumstances mentioned above.

40. It is further contended by the learned counsel for the petitioner that Ex. W21 letter would clearly show that the services of the persons who are engaged subsequent to WW1 were regularised while the said benefit is denied to WW1 and as such WW1 is also entitled for reinstatement. It is however contended by the learned counsel for the respondent that as a one time measure the services of temporary sweepers were regularised during the year 1990 but as WW1 was not in service during the period her services were not regularised and she cannot seek for reinstatement on the basis of Ex. W21.

41. On a consideration of the evidence placed on record, I find sufficient merit in the contention of the respondent. It is no doubt true that as per Ex. W21 letter and as elicited in the cross examination of MW3 the services of the persons mentioned in item Nos. 2, 5, 6, 8, 11, 12, 13 to 19 were regularised though engaged subsequent to WW1. He has further stated that the above regulation is only one time measure. I am of the view that WW1 cannot base her claim for regularisation on Ex. W1 as she was not working at the time of regularisation of some of the temporary sweepers during the year 1990. As stated above the evidence would clearly show that she was disengaged in 1987 July. She was again engaged in December, 1991 till 14-6-1992. During August, 1987 to November 1991 it is WW2 who was engaged as sweeper of Bank premises. It has been held in a decision reported in 1993 (2) LLJ Page 937 of the Supreme Court. Benefit of regularisation given to the employees as one time measure and fixing up a date for it, is not arbitrary and cannot be extended for ever. I therefore feel that simply because some sweepers who were engaged subsequent to WW1 were regularised as one time measure as per Ex. W21 letter, WW1 is not entitled to ask for extension of the said measure to her as she has been disengaged from August, 1987 to November 1991 as revealed from the evidence.

42. It is further urged that the fact that Smt. Bharati Bai who was selected for appointment as sweeper in Indian Bank was posted to respondent bank would show that the respondent is bent upon depriving WW1 the chance of regularisation. I find no merit in this contention that it is fact that one Bharati Bai was appointed as regular sweeper in respondent bank in 1992.

43. It is next urged by the learned counsel for the petitioner that as per Ex. M3 settlement, the Branch Manager can engage temporary sweepers to meet the exgencies of services for a period of 6 months and pending recruitment of regular sweeper and hence the union which entered into above

agreement is entitled to serve for regularisation of WW1 as she worked for more than 6 years.

44. I am of the view that Ex. M3 settlement would not come to the rescue of either the petitioner or to WW1 as the documentarty evidence placed on record by the worker WW1 herself proved it that she did not work for a period of 6 months continuously in any year and she was engaged only on casual basis to meet the administrative exigencies pending selection of regular sweeper. I am also of the view that as certain guidelines have been laid down for recruitment of part-time sweepers and as WW1 could not satisfy the said guidelines, she cannot seek for her regularisation. As already stated, pursuant to the direction of the Hon'ble High Court given under Ex. W2 order she has been called for interview along with the Employment Exchange sponsored candidates for the post of sweeper but she was not selected on the ground of non-suitability and non-completion of 240 days in a calendar year.

45. The latest decision on the point would go to show that even if a person worked for 240 days in 12 calendar months he/she cannot seek for regularisation if he/she was engaged on casual basis or on adhoc basis ignoring the recruitment rules and Employment Exchange. It has been held in the case of P. RAVINDRAN AND OTHERS vs. UNION TERRITORY OF PONDICHERRY AND OTHERS [1997(1) Supreme Court cases page 350] that regularisation, by passing the process of recruitment through open competition to be held by the Public Service Commission is not permissible. It has been held in the case of DELHI DEVELOPMENT HORTICULTURE EMPLOYEES' UNION vs. DELHI ADMINISTRATION.[1992(2) LLJ page 452] that the indiscriminating regularisation of the workmen on the only ground that they have put in 240 days or more days has been leading to disastrous consequences as it has become common practice of ignoring the Employment Exchange and the persons registered in the Employment Exchange cannot get call letter even inspite of waiting for number of years and it provides for back door entry into he Government services. It is further observed that these orders indiscriminiate regularisation many of the agencies have stopped to engage casual or temporary labour/workmen though there is urgent and essential need for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees. Similarly in the case of JAKIR HUSSAIN AND ENGINEER-IN-CHIEF IRRIGATION DEPARTMENT [1994(1)LLJ Page 5], the Allahabad High Court has been held that the regularisation cannot be made as a rule of thumb merely on the basis of completion of certain years of service by an employee. It depends on various factors some of which have been mentioned above, and it is for the employer to decide as to whether, in view of the fact and circumstances of the case the services of the employees who were appointed on adhoc/daily wage basis should be regularised. In the case of HIMANSHU KUMAR VIDYARTHI AND OTHERS vs. STATE OF BIHAR AND OTHERS [1997(4) Supreme Court cases 391], it has been held by the apex Court that of daily wagers were not appointed according to rules against any post, but were appointed according to need of the work, they have no right to post and the termination of services of such persons cannnot be deemed to be retrenchment under the I.D.Act. The concept of retrenchment, therefore cannot be streched to such an extent as to cover these employees and since the petitioners are only daily wage employees and have a right to the posts, their disengagement is not arbitrary.

46. Thus the above decisions would go to show that persons who are engaged on daily wage basis to meet the administrative exigencies pending regular appointment have no right to seek for regularisation or empanelment even if they have worked for 240 days or more days in a calendar year prior to the date of their disengagement.

47. In this case as stated there is no material on record to show that WW1 worked for 240 days in any calendar year much less the calendar of 12 months immediately preceded the date of termination. I therefore feel that the non-compliance of Section 25-F in this case does not arise, being the case of termination simplicitor but not retrenchment within the meaning of Section 2(oo) of the I.D. Act and even it is assumed that it is a case of retrenchment the condition of section 25-F need not be complied with as WW1 could have deemed to have completed of one year of service the meaning of Section 25-B(2)(b)(ii).

48. Further on perusal of Ex. M5 order the Hon'ble High Court in batch of Writ Petitions filed by temporarily appointed sweepers for regularisation and empanelment would also show that their request was also negatived. In view of the clear rules and guidelines with regard to the recruitment or empanelment of candidates, issued by the head offices to the concerned branch office. Their contention is also that they have been employed to the post of sweeper on temporary basis in the respondent-Bank. While disposing of Writ Petitions, it has been observed that the petitioners therein cannot claim as of right to engage them as temporary sub-staff and if the competent authority feels the necessity of preparing a second list, then if the petitioners therein quality for such empanelment their names may be considered for such empanelment. Hence I conclude that the claim of uinon that WW1 Smt. Yadamma is entitled for resinstatement due to violation of provisions of Section 25-F though she worked for the years 1985 to 1992 cannot be accepted. Hence these points are answered against the worker Smt. Yadamma.

49. POINT NO. 3:—It is the case of the respondent that the union has no locus standi to espouse the case of WW1 Smt. Yadamma. This plea was taken by the respopondent in its additionl counter filed by the Management. It is contended by the learned counsel for the respondent that WW1 is not a member of the petitioner union and as such it has no locus-standi to espouse the cause of WW1 Smt. Yadamma. It is submitted that even though this plea was not taken at the time of conciliation proceedings, there is no bar for raising this

objection before this Tribunal and it is for the union or workman to show by satisfactory evidence that the union has been authorised by the workman to espouse his/her case. But no such material placed on record in this case and hence the reference is not maintainable as the petitioner has no locus standi to raise dispute. In support of the contention he placed reliance in the case of DEBRAJ ARYA AND OTHERS vs. FIRST INDUSTRIAL TRIBUNAL, WEST BENGAL (1976 LAB. I.C. 1685 CALCUTTA HIGH COURT) AND IN THE CASE OF SAVERA AND CO. LTD. vs. THE SEVENTH INDUSTRIAL TRIBUNAL OF WEST BENGAL [1983 LAB. I.C. NOC 93(CAL)].

50. The learned counsel for the petitioner however repelled the contention by submitting that the petitioner-union can take up the cause of discharged employee even though he is not a regular employee and member of the union. He submitted that as per Section 36(c) of the I.D. Act, even though the worker is not a member of any trade union, the union (any member of the executive or other office bearer) of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed can espouse the cause. It is contended that as WW1 worked in the rsepondent-Bank and as the petitioner-employees union is connected to the respondent bank it is entitled to espouse the cause as it has been authorised by WW1 and it has not been elicited in the evidence of WW1 that she has not given any authorisation. It is submitted that the fact that WW1 approached the union for espousing her cause before the Labour Commissioner would clearly go to show that she has duly authorised the petitioner-union to raise the dispute. It is further contended that having not raised the said objection before the Asstt.. Labour Commissioner it is not open for the respondent to raise the said plea by way of additional counter as it amount to approbating or reprobating. In support of this contention, the learned counsel relied on the decision of Apx. Court in the case of R.N.GOSAIN vs. YASHPAL DHIR [1992(4) Supreme Court cases 683].

51. On a careful consideration of the decision relied on by the counsels and the material placed on record oral and documentary evidence I find no merit in the contention of the respondent. But there can be no quarrel with regard to principles of law canvassed by him. Admittedly this plea was not taken before the Asst. Labour Commissioner before whom the union has raised the dispute on behalf of WW1. THis plea was taken for the first time in the additional counter by the respondent. Section 36(c) of the I.D. Act provides for the union to take up the caurse of a workman who are not members of the union provided required authorisation is given. As per the decision relied by the learned counsel for the respondent also if the required on authorisation is given the union can espouse the cause of a worker who is not a member of the union.

52. MW1 to MW3 have no doubt stated that WW1 is not a regular employee and she is not a member of the union. But it has not been suggested to WW1 while she was in witness box that she is not member of the union nor it was suggested to her that she has not authorised the union to espouse her cause. Even after the additional counter was filed by the respondent, no attempt made to recall WW1 to make such suggestion, without making suggestion to WW1 that she is not the member of the union and that she has not authorised the union to espouse her case. It is not open for the respondent to contend on the basis of the evidence that MW1 to MW3 is not that as WW1 regular employee she is not a member of the union. Hence the union is not entitled to raise the dispute on her behalf, as such it has no locus standi. Had the respondent raised this plea in the original counter, it would have been elicited in the evidence of WW1 whether she has authorised the union to raise her dispute or not. As stated above, basing on original counter, no suggestion was made to her and even after filing additional counter or taking the new plea of the locus-standi of the union, WW1 was not recalled and cross-examined on the other hand on this aspect. But only course of evidence on behalf of respondent MW1 to 3 have deposed in support of the above plea. I therefore feel that the respondent could not show by any convincing evidence that the union has no locus standi to raise this dispute on behalf of WW1. This point is answered against the respondent.

53. POINT NO.4:—It is contended on behalf of the respondent that the reference itself is bad as the same is made aftrer delay of 5 years from the date of disengagement of WW1. According to the respondent the claim of WW1 became stale because of abnormal delay. For this reason also, she is not entitled for regularisation of her services, and reinstatement and hence the reference is bad. In support of his contention he placed reliance in the case of KARNAL CENTRAL CO-OP. BANK LTD. vs. PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK [1994 LAB.I.C. NOC 280 PUNJ & HAR].

54. The learned counsel for the petitioner however repelled the above contention and by submitting that there is no lapse on the part of workman. Admittedly this was taken in the additional counter.

55. On a consideration of material placed on record, I am of the view that there is no delay much less abormal delay in raising the dispute. Further there is a lapse on the part of WW1. The disengagement of WW1 took place on 14-6-1992. She has been making representations ever since for reinstatement. She sent Ex. W5 representation on 31-7-1992. She got Ex. W7 representation sent by the landlord of the building in which the respondent-Bank is situated. She gave representation Ex W11 in the year 1993. Ex. W15 representation dt. 24-9-1994 and the Zonal Office as making correspondence with the Branch Manager in this regard for furnishing Bio-data on the representation made by WW1. It received required information like Ex. W13, W23 and 24. Earlier in the year 1987 itself the worker Smt. Yadamma approached the Hon'ble High

Court for directing the respondent to interview her along with employment exchange sponsored candidates for the post of sweeper as brone out by Ex. W2. Smt. Yadamma waited for considerable time after making representation, expecting favourable orders. But as there was no response she has no option except to approach the union to take up her cause, Ex. W1 is the representation given by union at the earliest point of time i.e. in May, 1995. WW2 mother of WW1 also gave representation Ex. W14 to Asst. Labour Commissioner on 1-12-1995. The Bank also addressed a letter to the Asst. Labour Commissioner in the year 1995 as brone out by Exs. W13 and W19. After the conciliation proceedings ended in failure on 30-11-1995 under Ex. W20 this reference is made on 18-8-1997 as can be seen from the reference order this reference is made. Thus from the facts narrated above, it is clear that WW1 has been agitating for her rights from the year 1992 onwards by making representations to the Management in the beginning and thereafter by moving the Asst. Labour Commissioner for redressel her grievance. The facts of the case relied on by the learned counsel for respondent would show that there was delay of 10 years in making the reference. It would also appear that the satisfactory explanation was forthcoming for the delay. Thus it is distinguishable.

56. I am further of the view that even it is assumed that there is delay in raising the dispute the reference canot be held to be bad on the ground as no limitation is prescribed for referring the dispute under section 10 of the I.D. Act by the Government The delay or lapse on the part of the workman can be taken into consideration while awarding relief i.e. the relief can be moulded suitable be rejecting the back wages or denying the continuity of service. But it cannot be made basis for rejecting the reference itself on the ground of delay though it has been held in earlier decisions in the case of SUKHDEV RAJ vs. UNION OF INDIA AND OTHERS [1987 (Supp) Supreme Court cases Page 36] when retrenchment is held to be bad, the appellant workman is entitled to back wages. This point is answered against the respondent.

57. POINT NO. 5:—In view of my findings on points 1 & 2 which are material points in this reference I am of the view that the worker Yadamma who is examined as WW1 is not entitled to relief of reinstatement as there are no grounds to hold that athe termination of services of Yadamma is not justified and illegal due to non-compliance of Section 25-F of the I.D. Act. As stated above Section 25-F is not attracted to the facts of this case Hence even if it is assumed that the termination of service of WW1 amounts to retrenchment, it cannot be held illegal as she was engaged on daily wage basis as per the need i.e: for administrative exigencies, pending selection of regular sweeper.

58. In the result the reference is answered holding that WW1 is not entitled for reinstatement or for regularisation of her services as the termination of her service even if it amounts to retrenchment is not illegal and it is not a case of retrenchment but only discharge simplicitor i.e. engagement and disengagement depending upon the need and recruitment of regular Sweeper. Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 9th day of March, 1999.

C. V. RAGHAVAIAH, Industrial Tribunal-I

Appendix of Evidence :

Witnesses Examined for Petitioner :		**Witnesses Examined for Respondent :**	
WW1:	Yadamma	MW1.	P. Venkateshwara Rao
WW2:	Y. Maishmma	MW2:	Abdul Basik
WW3:	K Anasuya	MW3:	N. K. B. Muthaiah

Documents marked for the Petiotioner :

Ex. W1	Representation dt 23-5-98 made the union.
Ex. W2	Order dt. 14-7-87 in WPMP No 12527/87 in W.P.No. 9421/87.
Ex. W3	Letter dt. 6-12-89 addressed by the counsel of WW1 about the withdrawal of WP filed by W1.
Ex W4	Call letter dt. 13-2-89 sent by the respondent-Bank.
Ex. W5	Representation dt. 31-7-92 given by WW1 to the Zonal Manager
Ex. W6	Covering Letter dt. 6-8-92 forwarding Ex. W5 to the Zonal Officer.
Ex. W7	Representation given by landlord to the Chairman, Indian Bank.
Ex. W8	Letter dt. 28-10-92 addressed by the Branch Manager to Zonal Office.
Ex. W9	Letter dt. 12-9-92 of the Zonal Office addressed to Regional Manager, to send Bio data of WW1.
Ex. W10	Letter dt. 28-11-92 of the Branch Manager to Zonal Office.
Ex. W11	Representation of WW1 dt. 21-9-93 to the Zonal Manager.
Ex. W12	Letter dt. 22-9-93 addressed by the Branch Manager to the Zonal Office
Ex. W13	Letter dt. 28-9-95 addressed by Zonal Office to the Asst. Commissoner of Labour.
Ex. W14	Representation dt. 1-12-95 given by the Union to the A.C.L., Hyderabad.
Ex. W15	Respresentation dt. 24-9-94 given to the Zonal Manager by WW1.
Ex. W16	Postal acknowledgement card.
Ex. W17	— do -
Ex. W18	— do —
Ex. W19	Written brief dt. 8-8-95 submitted by the bank before A L.C.
Ex. W20	Minutes of conciliation proceedings dt. 30-11-95.

Ex. W21 Letter dt 14-9-90 from the Zonal Office to the Branch Manager.

Ex. W22 Calling for information by the Zonal Office on 1-10-93 addressed to the Branch Managers.

Ex. W23 Reply dt. 6-10-93 submitted by MW 1 regarding reply to Ex.W22.

Ex. W24 Details of engagement WW1 from 15-11-85 to 14-6-92, dt. 24-11-92.

Documents marked for the respondent :

Ex. M1 Circular dt. 30-9-78 regarding filling up of the vacancies through Employment Exchange.

Ex. M2 Instruction dt. 4-3-83 from the Central Office of Indian Banks.

Ex. M3 Settlement dt. 28-7-93 regarding the sweepers.

Ex. M4 Representation dt. 31-7-92 given by WW1 to the Zonal Manager.

Ex. M5 Award in I.D. No. 32/95 on the file of this Tribunal.

Ex. M6 Judgement dt. 16-2-98 in W.P. No. 18998/98.

Industrial Tribunal-I, Hyd.,

नई दिल्ली, 25 मई, 1999

का.आ. 1705.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/-I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-5-99 को प्राप्त हुआ था।

[सं. एल-12012/388/97-आई.आर. (बी-II)]

सी. गंगाधरण, डैस्क अधिकारी

New Delhi, the 25th May, 1999

S.O. 1705.—In pursuance of section 17 of the Industrial Dispute Act. 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 24-5-99.

[No. L-12012/388/97-IR(B-II]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present : —Sri C.V.Raghavaiah, B.Sc., B.L., Industrial Tribunal-I

Dated : 25th day of February, 1999.

INDUSTRIAL DISPUTE NO. 27 OF 1998

Between :

The Secretary, Syndicate Bank
Employees Union, Near Pragati College,
Kandaswamy Lane Hanuman Tekdi, P.B. No. 567,
Hyderabad-195. .. Petitioner

And

The Dy. General Manager, Syndicate Bank,
Zonal Office, Pioneer House, 6-3-653,
Somajiguda, Hyderabad. ... Respondent

Appearances :—

Sri K. Rama Reddy, Secretary of Syndicate Bank Employees Union.

A. Krishnam Raju, Advocate for the Respondent.

AWARD

The Government of India, Ministry of Labour by its Order No L-12012/388/97/IR (B-II) dated 28/31-8-1998 made this reference under Section 10 (1) (d) and sub-Section (2A) of I.D. Act to this Tribunal for adjudication of the following dispute :

> "Whether the action of the management of Syndicate Bank in awarding the punishment of stoppage of one increment with cumulative effect on Sh. N.A.V. K. Kumar, Clerk, though held not guilty by Enquiry officer is legal and justified. If not, to what relief the said workman is entitled?"

on being served with notice, both parties made their appearance and filed their respective pleadings.

2. The case of the workman as disclosed from the claim statement filed by him briefly is as follows : The workman N.A.V.K. Kumar is working as Clerk in Allur Branch of the respondent-Bank. The disciplinary authority i.e. Asst. General Manager, Zonal Office served charge sheet dt. 30-5-1992 on him alleging that he has fraudulently withdrawn a sum of Rs. 2,000/- from his SB Account in Kavali Branch on 1-5-85 and destroyed the cheque to cause disappearance of his fraud while working at Peddapavani Branch. A departmental enquiry was held and enquiry officer submitted his report finding the petitioner/workman as not guilty after considering his detailed explanation. But the disciplinary authority did not accept the report of the Enquiry Officer and gave show cause notice proposing stoppage of two increments with cumulative effect to which the petitioner workman gave explanation and also availed personal hearing provided on 19-3-96. But the disciplinary authority without considering the explanation of the workman but based on his own imagination, passed the order dt. 30-3-96 inflicting punishment of stoppage of one increment with cumulative effect. The appeal preferred by the workman was dismissed by the appellate authority by its order dt. 12-9-96. According to the workman the management inflicted punishment though Enquiry Officer found him not guilty, with vindictive attitude. Hence the reference. The petitioner-workman prayed for setting aside the action of the management inflecting above punishment.

3. The respondent Management filed a detailed counter resisting the claim petition. It admitted that petitioner is its employee that he was served with charge sheet for fraudulently withdrawing Rs. 2000/- from SB Account of Kavali Branch, that after due enquiry he was inflicted punishment of

stoppage of one increment with cumulative effect after giving show cause notice and giving opportunity of personal hearing and that the appeal preferred by him was also dismissed. It however denied that the petitioner workman is not guilty of the charge levelled against him and there is no legal evidence in support of the charge. It contended that Enquiry Officer has not properly examined the evidence placed on record and erred in accepting the case of the delinquent that he lost the cheque in question It contended that the disciplinary authority has thus for valid reasons disagreed with the finding of the enquiry officer and taking lenient view, imposed minimum punishment. It thus contended that there are no grounds much less valid grounds to hold that punishment was imposed with vindictive attitude. It prayed for rejecting the reference.

4. The respondent filed domestic enquiry report. The petitioner-workman did not dispute the validity of the enquiry proceedings. During domestic enquiry MW1 to 5 are examined and Exs. MEX 1 to 17 are marked. No evidence adduced on behalf of the delinquent.

5. No oral evidence adduced by either side before this Tribunal. But both sides filed documents which was marked with consent. On behalf of petitioner- workman Exs. W1 to W11 while on behalf of the respondent Ex. M1 was marked.

6. The only point that arises for determination is whether the respondent management is not justified in imposing punishment of stoppage of one increment with cumulative effect on the petitioner though he was found not guilty by the Enquiry Officer.

7. POINT :—Before going into the merits of rival contention it is useful to set out factual matrix of the case which is undisputed. The petitioner-workman worked in Peddapavani branch of the respondent-Bank. He was having SB Account No. 10419 at Kavali Branch of the respondent. He operated the above account on 6-8-84. He was served with Ex. W1 charge sheet dt. 30-5-1992 alleging that on 1-5-85 he presented cheque bearing No. 87207 and withdrew Rs. 2,000/- from his account, that taking advantage of the fact that debit entry was not made in his account by inadvertance, he gave an application on 1-8-84 for closer of the above account, that on 2-8-84 the account was closed and he withdrew a sum of Rs. 7780.20 P. from his account but not surrendered the unused cheques and that he has thereafter destroyed the instrument under which he withdrew Rs. 2000/- on 1-5-84 and hence his acts constitute gross misconduct within the meaning of Section 19(5) (j) of Bipartite Settlement. The workman was advised to file his statement in defence within 15 days of receipt of the charge sheet. He filed statement denying the charges. Not being satisfied with his explanation a departmental enquiry was ordered by the disciplinary authority. One Sri B.K. Raju was appointed as an Enquiry Officer. During the course of enquiry on behalf of management, MW1 to 5 were examined and Ex. MEX 1 to 14 are marked. No evidence was however adduced on behalf of the delinquent. MW 1 was however declared hostile. There is no dispute that the enquiry was held in a proper and fair manner and there is no violation of principles of natural justice.

8. After considering the oral and documentary evidence produced by the management and explanation given by the deliquent, the enquiry officer submitted Ex. W2 report dt. 15-2-93 finding the delinquent not guilt of any of the charges levelled against him. Ex W3 is the zerox copy of enquiry proceedings. The delinquent was furnished with copy of the enquiry report and finding of the enquiry officer. The disciplinary authority however did not accept the finding of the enquiry officer. Hence he found him guilty of the charges that he fraudulently withdrew Rs. 2,000/- from his account. Hence the delinquent was issued Ex. W3 show cause notice dt. 27-12-95 for which the delinquent sent Ex. W4 reply dt. 4-3-96 The disciplinary authority did not accept his explanation and issued Ex. W5 notice proposing the punishment of stoppage of 2 increments with cumulative effect and giving opportunity of personal hearing on 19-3-96. The disciplinary authority thereafter passed Ex. W6 final order dt. 30-3-96 imposing penalty of stoppage of one increment with cumulative effect as against the punishment proposed under Ex. W5.

9. Aggrieved by Ex. W6 order the workman preferred appeal to the General Manager (I) Head Office. Ex. W7 is the copy of grounds of appeal dt. 10-5-96. The appeal was however dismissed under Ex. W8 order dt. 17-7-96 Before this Tribunal the petitioner. Workman marked Ex. W9 cashier scroll dt. 1-5-85 and officer scroll of the same date to corroborate his version that he was on duty on 1-5-85 at Peddapavani and Ex. W11 letter dt. 24-4-85 sent by the delinquent to the Manager Syndicate Bank Kavali informing him that he lost the Blank Cheque No. 087207 of his SB Account 10419 on 22-4-85 during the course of journey. They were filed by the delinquent to show that he lost the above cheque and has not withdrawn Rs. 2000/- from his account on 1-5-85 and that he was on duty at Peddapavani Branch on 1-5-85. The delinquent has admittedly closed his account in Kavali Branch on 2-8-85 but did not surrender unused cheques.

10. It has been urged on behalf of the workman by the learned representative in his oral arguments as well as in written arguments that equiry officer has rightly rejected the evidence placed on record and came to correct conclusion that respondent failed to prove either by direct or circumstantial evidence that the delinquent workman has withdrawn Rs. 2000/- on 1-5-85 from his SB Account and destroyed or caused to be destroyed the instrument though it disbelieved the version of the workman that he lost the cheque in question in transit on 24-4-85 and informed the said fact to Manager of Kavali Branch under Ex W11, in view of the material brought on record that petitioner attended to his duty on 1-5-85 at Peddapavani Branch. It is submitted that disciplinary authority was not justified in disagreeing with the finding of the enquiry officer and placing reliance on the circumstantial evidence of M. W2 to 5 though MW1 turned hostile. It is submitted that the reasons given by the disciplinary authority in Ex W3 and W6 for not accepting Ex. W2 finding of the En-

quiry Officer are neither cogent nor convincing. It is submitted that material brought on record by the deliquent i.e. Ex. W9 and 10 would show that he worked in Peddapavani Branch on 1-5-85 which would disprove that the workman encashed cheque of Rs. 2,000/- on 1-5-85. It is submitted that in the absence of cheque as rightly observed by the Enquiry Officer, the disciplinary authority is not justified in finding the workman as guilty, relying on the circumstance he failed to handover the unused cheques at the time of closing his account on 2-5-85. It is thus submitted that there is no acceptble evidence on record in support of the finding of the disciplinary authority as Ex. W11 would show that the workman lost the cheque in question on 24-4-85 and brought the said fact to the notice of branch Manager, Kavali immediately. The learned representative has thus urged that disciplinary authority acted in a vindictive manner though there is no legal evidence in support of his finding.

11. The learned counsel for the respondent however supported Ex. W3 and W6 final order of the disciplinary authority. It is submitted that disciplinary authority can differ with the finding of the enquiry officer if it is perverse and contrary to material placed on record. It is submitted that having found that the workman was in possession of the cheque in question on 1-5-85 and having not believed his version that he lost it in transit, that petitioner has no justifiable cause for not returning unused cheque as the time of closing of the account the Enquiry Officer was not justified in recording finding if 'not guilty' on the ground that the cheque in question is not available. It is submitted that one of the charges levelled against the petitioner is he has destroyed the cheque in question. It is submitted that in the absence of cheque which will serve as direct piece of evidence the management has adduced circumstantial evidence in the shape of Officer and cashier scroll which proved beyond doubt that the cheque No. 87207 given to the workman was encashed on 1-5-85 and a sum of Rs. 2,000/- was withdrawn from his SB Account 10419 It is submitted that though MW1 turned hostile, his evidence also showed that he was shown the cheque in person by the petitioner on 1-5-85. It is submitted that Exs. W9 and 10 are not sufficient to hold petitioner did not encash the cheque as it is not difficult to come to Kavali from Paddapavani village on as the petitioner is also bank employee the cheque was duly passed and cash was paid after he came to the bank after working hours. It is submitted that this circumstance by itself not sufficient to disagree with the conclusion of disciplinary authority who gave cogent reasons for not accepting the finding of the Enquiry Officer.

12. On a careful consideration of Ex. W2 enquiry report Ex M1 enquiry proceedings and Ex. W3 and W6 orders of the disciplinary authority I find sufficient force in the contention of the respondent that disciplinary authority for valid and cogent reasons rightly disagreed with the findings of the enquiry officer though MW1 P. Paul Sunder who worked in S.B. counter on 1-5-85 was declared hostile as he did not support the management version and gave go bye to Ex. MEX 9 statement said to have given by him to MW2 the investigation officer. I am of the view that his evidence need not be discorded in toto. But can be accepted to the extent it is relevant. His evidence clearly showed that he made entry in SB Day Book i.e. in Ex. MEX 3, that a sum of Rs. 2000/- was debited to SB Account 10419 and the instrument was available when the said entry was made by him. It is the case of the management that under Cheque No. 83207 pertaining to the petitioner Rs. 2000/- was drawn from his SB Account 10419. Thus it is obvious that the cheque was presented for encashment on 1-1-85 and the amount drawn was not debited in SB Account No. 10419 of the petitioner. It is not in dispute that said cheque forms part of the cheque book issued to the petitioner workman. Ex. MEX 14 i.e. Ex.W11 letter said to have been sent by [illegible] Kavali Manager clearly shows that the said cheque belongs to him. Though it is alleged in Ex. MEX 14 that he lost cheque on 24-4-85, the petitioner did not place any material before the Enquiry Officer that he in fact sent said letter to Kavali Branch. As rightly pointed out by the Enquiry Officer and disciplinary authority if the petitioner lost the cheque as a clerk of the bank he would get the said fact entered in his SB Account or send the letter by registered post so that it may not be misused by any person coming across it. Further there is nothing in Ex. MEX 14 i.e. Ex. W11 to show that he signed in the said cheque when it was lost. It is merely stated that he lost blank cheque of the above number. Thus there is nothing in the said letter to show that he lost signed cheque. Even if it is assumed that he signed in the missing cheque it is difficult to believe that he signed in a blank cheque i.e. without filling up the relevant column as to for which amount it is drawn. Being clerk of the Bank there can be no doubt that he is aware of consequence if losing a blank cheque. As a responsible person, it is impossible to belived that he signed in a blank cheque and lost it in transit. I therefore feel that that both the authorities have rightly disbelieved the version of the petitioner that he lost the above blank cheque in transit. There can be no doubt that he came up with the above version to escape from liability. Hence there can be no doubt that cheque in question which was presented on 1-5-85 was found missing later. But it cannot be said that petitioner was responsible for the same as he is not staff of Kavali Branch. Hence I feel that Enquiry Officer as well as disciplinary authority have rightly found him not guilty of this charge i.e. he has destroyed the instrument in question.

13. The evidence of MW3 Sri Subba Rao who worked as manager kavali Branch between June 85 and July, 1990 i.e. after this incident would show that as the SB Account of Kavali Branch was not tallied upto date they were trying to tally the account and locate the difference in August and September 1985 that in so doing they noticed that debit item of Rs. 2000/- was not entered in the SB Account of the deliquent, that on further verification it is found that entry of Rs. 2000/- was entered in the SB Day Book, Officer Scroll and cashier scroll, that they called for day book slip bundles of 1-5-85 and found that particular day book slip was missing from the bundle. It then they contacted the petitioner/workman about non entry of this item in his SB Account and that he promised

to pay back if no action is taken, having admitted that he has drawn the amount and that as he did not reply that reported the matter to Divisional Office Nellore. His evidence showed that they have not taken any statement from the petitioner. Thus it is obvious that his evidence is circumstantial in nature and he is not direct witness. Though the petitioner stated that MW3 falsely implicated him to save some one else, I find no merit in this contention. Thus his evidence which is least impeached would show test besides in SB Day Book, there is entry with regard to withdrawal of sum of Rs. 2000/- under the above cheque in the officers scroll i.e. Ex. Mex 10 and Cashier scroll i.e. Mex 11 marked in the domestic enquiry. I am of the view that his evidence is least impeached with regard to the fact spoken by him and rightly accepted by the disciplinary authority. Simply because MW3 did not obtain statement from the petitioner admitting his guilt it cannot be said that he came up with false version. When confronted with Ex. Mex 14 he denied any knowledge about it and further stated that nothing is mentioned in SB Account ledger to stop payment. As already held if Ex. Mex 14 was really sent and received by the Branch definitely stop payment entry would have been made in the ledger and the petitioner who is also bank employee would have taken care to see that stop payment entry is made in respect of the above cheque in his ledger as a prudent account holder. Further being the bank official he is aware of consequence if unscrupulously person comes across the lost cheque. Hence as already pointed out that the authorities have rightly rejected this version of the petitioner.

14. MW4 is one Bhoolaxmi. She workerd in Kavali Branch from June, 1985 to January, 1991. Her evidence showed that whenever account holder is closing account she was insisting for surrender the unused cheque leaves and pass book. Her evidence is not of much relevance being the procedure to be followed at the time of closing account.

15. MW5 is Sri V. Mohan Kumar. He worked as Asst. Manager in Kavali Branch from 1984 to 1987. His evidence showed that the petitioner did not surrender unused cheques while closing his SB Account and he did not come across Ex. Mex 14 i.e. Ex. W11 letter. He denied the suggestion that petitioner surrendered unused cheque but with view to safeguard his own interest as incharge of SB Department he has made false entry in the ledger. Thus his evidence is also ciscumstantial in nature and deals with non-surrender of unused cheque but not the withdrawal of Rs. 2000/- I find no reason for MW5 to depose falsely against the petitioner. No material placed on record by the petitioner to show that he has in fact surrendered unused cheques and pass book at the time of closing account on 2-8-85.

16. MW2 is one N. Niranjan Murthy. He worked in Vigilance Unit at Madras. On the instruction from Head Office Vigilance cell, he conducted the investigation on the report sent by MW3 the then Manager. He examined MW1, M3 to 5 and recorded their statements and perused the concerned reports and submitted preliminary report.

17. Thus from the evidence placed on record it is proved beyond doubt that sum of Rs. 2000/- was withdrawn on 1-5-85 from the SB Account of the petitioner under Cheque No.87207, that a debit entry was not made in the SB Account of the petitioner, that the said instrument was however misplaced or destroyed, that on 2-8-85 the petitioner closed his account in Kavali Branch and withdrew Rs. 7,780.20 as Rs. 2,000/- withdrawn on 1-5-85 was not debited and the petitioner also failed to surrender the unused cheques and pass book at the time of closing of the account and the petitioner could not prove by any tangible evidence except marking Ex. Mex 14 which is same as Ex. W11 that he lost the above cheque in transit. I am of the view that even if it is assumed that the petitioner was on duty at Peddapavani Branch on 1-5-85 though Exs. M10 and 11 which are same as Exs. W9 and 10 would not disclose the said fact, they are not sufficient to hold that petitioner did not encash the above cheque. It would appear that petitioner was residing at Kavali while working at Peddapavani. It is probable that he encashed the cheque before leaving to peddapavani or gave the cheque to some staff member at Kavali Branch and it was paid in the usual manner. The distance between two places said to be only 20 K.Ms.

18. There can be no doubt that the standard of post required in domestic or departmental enquiry is not same as in the case of civil or criminal proceedings and even discrepancies if any in the evidence does not matter and the court or tribunal cannot substitute its own conclusion on appreciation of evidence as if it is sitting in appeal and the provisions of evidence Act are not applicable in departmental proceedings and finding of guilty can be arrived on the basis or preponderance of probability. The case law in this regard is well settled and it is suffice to refer to the decision of Apex Court in High Court of judicature of Bombay Vs. Udaya Singh and others 1997(76) FLR 532(SC).

19. The disciplinary authority on the basis of above circumstantial evidence which is supported by the entries in the Officer and Cashier Scrolls, in absence of proof that the petitioner lost the cheque in question and taking into consideration that the petitioner failed to surrender the unused cheques as required by Bank Rules at the time of closure of the account, came to the conclusion that it is the petitioner who has encashed the above cheque and draw Rs. 2000/- and taking advantage of absence of debit entry in his account closed the account and withdrew Rs. 7780.20 though the balance should have been Rs. 5780.20 and thus defrauded the Bank and caused pecuniary loss to the Bank though there is no sufficient material on record to hold that he has destroyed or accused destruction of the instrument in question. I am of the view that disciplinary authority has given sufficient reason for not accepting the finding of the Enquiry Officer as it failed to appreciate properly the evidence of MW1 to 5 and Exs. M2 and 3.

20. After going through Ex W3 order of the disciplinary authority and evidence on record, I find no reason to disagree with the conclusion reached by the said authority as it is based on preponderance of the probabilities appearing in

the case pointed out above. I am of the view that having regard to the circumstance appearing in the case and preponderance of probability, the disciplinary authority has come to correct conclusion. I therefore hold that the findings of disciplinary authority is supported by legal evidence and the petitioner was rightly held to be guilty of misconduct. I find no reason to hold that disciplinary authority acted in vindictive manner as no motive alleged against him. I am also of the view that the appellate authority has also properly appreciated the material on record and rightly dismissed the appeal vide Ex. W6. I therefore hold that the guilty of the petitioner is proved by satisfactory evidence regarding the charge that he caused pecuniary loss to the respondent Bank to the tune of Rs. 2000/- by withdrawing the said amount again which he withdrew earlier on 1-5-85 by encashing the cheque, at the time of closing account on 2-5-85, taking advantage of the fact that debit entry was not made on 1-5-85 in his SB Account I however feel that evidence on record is not sufficient to hold that he destroyed the instrument. It may be that with connivance of some staff members at Kavali Branch he got removed the cheque. The facts of the case clearly show that all is not well with the staff of Kavali Branch as necessary debit entry was not made and above all the instrument itself was misplaced.

21. Coming to the punishment it is stated that for want of direct evidence the disciplinary authority took lenient view and imposed punishment of stoppage of one increment as against two increments proposed after considering. Ex. W4 explanation given by the petitioner to Ex. W3 show cause notice and after considering the personal representation made by the petitioner. It is submitted that having regard to the grave misconduct proved against the petitioner, the punishment cannot be said to be harsh and disproportionate to call for interference under Section 11A of I.D. Act. The learned representative for the petitioner/workman however submitted that punishment inflicted is disproportionate to the alleged misconduct as some of the staff members who are responsible for not making debit entry and for loss of instrument are let off I find some merit in the contention of the petition.

22. From the material placed on record it would appear that the action of the petitioner is not pre-planned i.e. he has not intended to defraud the bank initially. But coming to know of the fact somehow or other, may be from one of colleagues working in the Kavali Branch, that no debit entry was made in his account for Rs. 2000/- encashed on 1-1-85 and that the instrument is also lost, the petitioner closed his account on 2-8-85 and withdrew the entire amount including Rs. 2000/- already drawn and did not surrender the unused cheques but came up with belated version that he lost the cheque in question in transit and thereby caused pecuniary loss to the bank. It may be some employee in the bank with a view to help petitioner caused disappearance of the cheque with a view to save the petitioner. Thus it appears that some unidentified employee of Kavali Branch had also played major role as he caused disappearance of the cheque presented for encashment. Hence having regard to the facts and circumstances of the case and as there is no material on record that petitioner has bad antecedents to his credit. I feel that the ends of justice will be met by modifying the punishment as 'without cumulative effect' as otherwise the petitioner would suffer monetary loss throughout his career.

23. Hence I conclude that there is no merit in the contention of the petitioner that the authorities are not justified in awarding punishment though the charge is not proved. I am however of the view that it is a fit case to modify the punishment 'as stoppage of increment of one year without cumulative effect'. The point is answered accordingly.

24. In the result, the reference is answered as follows : The petitioner was rightly found guilty of the charge of causing pecuniary loss to the bank by taking advatage of the fact that debit entry was not made in his account for Rs. 2000-/ withdrawn by him on 1-5-85. The punishment passed by the disciplinary authority and confirmed by the appellate authority is however modified as 'without' cumulative effect while confirming the punishment of stoppage of one increment.

Written by me on this the 25th day of February, 1999.

C. V. RAGHAVAIAH, Industrial Tribunal-I

Appendix of Evidence ;

No oral evidence adduced by either parties.

Documents marked for the petitioner with consent :

(All are xerox copies)

Ex. W1	Charge sheet dt. 30-5-92 issued to N. V. A. Kumar.
Ex. W2	Enquiry report submitted by the Enquiry Officer on 15-2-93.
Ex. W3	Show cause notice issued to the workman N.V. A. Kumar on 27-12-95.
Ex. W4	Letter submitted by Sri N.V. A. Kumar to Ex. W3 on 4-3-96.
Ex. W5	Personal hearing notice issued by the Disciplinary Authority on 6-3-95.
Ex. W6	Final Order dt. 30-3-96 passed by the Disciplinary Authority against Sri N. V. A. Kumar.
Ex. W7	Appeal submitted by Sri N. V. A. Kumar to the Appellate Authority on 10-5-96.
Ex. W8	Proceedings of the Appellate Authority dt. 17-7-96.
Ex. W9	Cashier's Scroll dt. 1-5-85 of Peddapavani Branch where the employee was working.
Ex.W10	Officers' Scroll of Peddapavani Branch dt. 1-5-85.
Ex. W11	Letter dt. 24-4-85 of Sri N. V. A. Kumar addressed to the Manager Syndicate Bank, Kavali.

Documents marked for the Respondent by consent :

Ex. M1	Enquiry Proceedings conducted against Sri. N. V. A. Kumar (xerox copy)

नई दिल्ली, 26 मई, 1999

का. आ. 1706.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सदर्न रेलवे, केरल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट, अर्नाकुलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-05-1999 को प्राप्त हुआ।

[सं. एल-41012/88/93-आई. आर. (बी-I)]

सी. गंगाधरन, डैस्क अधिकारी

New Delhi, the 26th May, 1999

S.O. 1706.—In pursuacne of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Ernakulam as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Southern Rly., Kerala and their workman, which was received by the Central Government on 25-05-1999.

[No. L-41012/88/93-IR(B-I)]

C. GANGADHARAN, Desk Officer

ANNEXURE

IN THE LABOUR COURT, ERNAKULAM

(Wednesday, the 21st day of April, 1999)

PRESENT :

Shri D. Mohanarajan, B.Sc., LL.B.,

Presiding Officer

Industrial Dispute No. 10/95(C)

BETWEEN

The Divisional Personnel Officer, Southern Railway, Palghat, Kerala

AND

The General Secretary, Dakshin Railway Casual Labour Union, Edappally North, Cochin-682024, Kerala

Representations :

Shri P. M. M. Najeeb Khan,
Advocate, United Law Chambers,
S.R.M. Road, Kochi-18. ...For Management

Sri. Paulson C Varghese,
Advocate, Azad Road,
Kochi-17. ...For Union

AWARD

The Government of India as per Order No. L-41012/88/93-IR-BI dated 5-5-95 referred the following industrial dispute to this court for adjudication :

"Whether the action of the Divisional Personnel Officer, Southern Railway, Palghat in terminating the services of Sri. K. C. Arumugham, Ty. Gangman under PWI/Quilandy w.e.f. 18-5-84 is justified? If not, to what relief the concerned workman is entitled?"

2. Pursuant to the notice issued from this court the union and the management entered appearance and advanced their respective pleadings.

3. The claim statement of the union reads in short as follows :

The workman involved in this dispute was employed as Mazdoor under Permanent Way Inspector, Quilandy of the Southern Railway. He was appointed on 30-3-83 and was arbitrarily terminated on 18-4-1984 without stating any reasons. He was paid Rs. 780/- at the time of termination No notice pay or eligible compensation was paid to him. Hence the action of the management terminating the services of the workman is unjustified and unsustainable and against the provisions of the Industrial Disputes Act. The workman is not alternatively employed anywhere. He is finding it very difficult to meet both ends without any earnings. It is prayed that an award be passed directing the management to reinstate the workman with continuity of service, back wages and other benefits.

4. The contentions of the management in the written statement are summarised below : The workman was initially engaged as a casual labourer on daily rates of wages w.e.f. 8-12-82. While he was working as such under the Permanent Way Inspector, Quilandy his services and the services of another 12 casual labourers were required to be terminated w.e.f. 26-4-84 for want of further work and sanction. Accordingly those casual labourers were served with notices of termination. The workman herein received the said notice on 10-4-84. Challenging the notices of termination, the 13 casual labourers filed a writ petition as O. P. No. 3621/84-K before the Hon'ble High Court. As per the decision in that O. P., the 13 casual labourers including the workman were retrenched from service on 18-5-84 duly complying with all statutory requirements in the Industrial Disputes Act. Salary from 21-4-84 to 18-5-84, notice pay and retrenchment compensation in favour of the 13 casual labourers were arranged for payment. But they accepted the salary alone and declined to accept the retrenchment compensation and notice pay. This fact was duly communicated to the Assistant Labour Commissioner (Central), Cochin and the Secretary, Ministry of Labour, New Delhi by the Permanent Way Inspector, Quilandy. After the workman was retrenched from service, he had filed claim petition No. 11/87 before the Labour Court, Kozhikode claiming difference in wages for the period from 29-12-83 to 20-1-84. He was granted temporary status and was paid the arrears of Rs. 474/- on 21-1-88 pursuant to the decision in the said claim petition. Even the grant of temporary status will not alter the status of a casual labourer. The workman had no claim for C.P.C. scale of pay before 1987. He should have received the payments then and there and if there was any complaint regarding the payment, he was able to seek the

remedies later. He was out of employment from 1984 and his present attempt to gain undue advantage is not allowable at any rate. His claim for reinstatement with continuity of service and backwages is unsustainable and deserves no favourable consideration.

5. In the rejoinder filed by the union, the averments in the claim statement are reiterated and the contentions of the management in the written statement are refuted.

6. The evidence consists of the testimony of WW1 & MW1 and Exts. W1, W2 & M1 to M3.

7. The points that arise for consideration are :

(1) Whether the termination of service of the workman by the management is justifiable?

(2) Whether the workman is entitled to reinstatement with consequential benefits?

8. The Points : It is the admitted case that the workman Sri K. C. Arumughan was in the service of the management railway as casual labourer from 8-12-1982 to 18-5-1984. Ext. W1 is the copy of the service card issued to him. It is evident from this case that he was engaged as casual labourer for 370 days. According to the management, his services and the services of another 12 casual workers were required to be terminated w.e.f. 26-4-84 for want of further work and sanction from the higher authorities and so they were served with notices of termination on 10-4-84. It is further drawn to the notice of this court that the aggrieved casual labourers including the petitioner approached the Hon'ble High Court in O. P. 3621/84-K challenging the termination notice. The worker who was examined as WW1 has admitted this fact when he was cross examined. Even according to him, that O. P. was disposed of with specific directions to comply with all statutory requirements in the Industrial Disputes Act before the proposed retrenchment.

9. The definite case of the management is that as per the directions of the Hon'ble High Court in the said O. P. filed by the workman and others, the 13 casual labourers were retrenched from service on 18-5-84 and that the wages due from 21-4-1984 to 18-5-1984, notice pay and retrenchment compensation were also arranged for payment to them. Although they received the wages in arrears, they declined to accept notice pay and retrenchment compensation. According to the management, this fact was forthwith communicated to the concerned Assistant Labour Commissioner and the Secretary, Ministry of Labour, New Delhi. What is contended by the union is that no notice pay and retrenchment compensation were offered to the workman at any time on or before the termination and so the action of the management is unsustainable and against the provisions of the Industrial Disputes Act. As WW1 also, the workman has said that there was no offer from the management for payment of notice pay and retrenchment compensation before termination.

10. Ext. W1 service card relied on by the union falsifies the above statement of WW1 inconformity with the contentions of the union in the claim statement and rejoinder. The latter part of Ext. W1 service card reads as follows : "The service was terminated on 18-5-1984. Accordingly payment of wages upto 18-5-1984, notice pay and retrenchment compensation were arranged at Quilandy through special cashier on 18-5-84. Party refused to accept notice and also the payment. All the above three payments were offered to the party who accepted only wages upto last 18-5-84. Notice pay and retrenchment compensation were refused and hence kept unpaid". The above entry is seen to have been attested by the Permanent Way Inspector, Quilandy. Further, the fact that notice pay and retrenchment compensation offered by the management were refused by the workman has been admitted by the union through Exts. M1 to M3, the copy of notices issued by the union to the Divisional Railway Manager and the Assistant Labour Commissioner(C). The stand taken by the union through Exts. M1 to M3 is that the workman was constrained to decline notice pay and retrenchment compensation offered by the management as the offer was based on daily wages at the rate of Rs. 8.50 as against Rs. 438.37 per month of Central Pay Commission Scales of pay. It is pertinent to note that the wages in arrears at the rate of Rs. 8.50 was received by the workman on 18-5-84. But notice pay and retrenchment compensation at that rate was refused by him on the same day. It is true that as per the decision of the Labour Court, Kozhikode in C.P. No. 11/87, he was paid arrears of wages at the Central Pay Commission scales of pay on the ground that he has attained temporary status. Even that claim petition was filed only after a lapse of 2 years of termination of service. It cannot be said that a casual labourer who attained temporary status can never be terminated from service. Such casual worker can also be terminated from service for any of further work and other reasonable grounds, but only in accordance with the statutory requirements provided in Section 25F of the Industrial Disputes Act. In the instant case, there is ample evidence to the effect that retrenchment compensation and notice pay in lieu of one months notice were duly arranged for payment to the workman at the prevailing rate of wages applicable to him. But he had deliberately declined to accept the same without assigning any reason. The grounds specified in a subsequent order of the Labour Court, Kozhikode do not favourably consider for his said denial. Undoubtedly, on the date of his retrenchment, he was a casual labourer on daily wages and the claim petition was filed by him only in the year 1987, 2 years from the date of retrenchment. For the foregoing reasons, I am inclined to hold that the termination of service of the workman by the management is justified.

11. It was also argued on behalf of the management that the claim for reinstatement is barred by limitation as the dispute was raised after a lapse of 11 years from the date of retrenchment. It is true that the plea of limitation does not figure in the written statement filed by the management. Section

3 of the Indian Limitation Act provides that limitation bar need not neccessarily be pleaded as a defence by the Opposite Party. If this issue is pointed out at any stage of the proceedings, it is for the court to enter into a finding as to whether the claim is barred by limitation. The Apex Court in Raton Chandra Samantha Vs. Union of India (AIR 1993 SC 2276) has held that inordinate delay deprives a person of his remedy available in law and that in the absence of any fresh cause of action or legislation, such person has lost his remedy by lapse of time The same principle is laid down in the Supreme Court decision in Secretary to Government of India and others Vs. Shivram Mahadu Gaikwad [1955 SCC (L & S) 1148]. Hence I am in full agreement with the management that the claim for reinstatement with consequential benefits is also liable to be dismissed on the ground of inordinate delay.

12. From my foregoing discussions, these points are found in favour of the management and against the union.

In the result, the reference is answered holding that the action of the management in terminating the service of the workman Sri. K. C. Arumugham is justified. He is not entitled to any relief. An award is passed accrordingly.

Dictated to the Confidential Assistant, transcribed and typed out by her corrected by me and passed this the 21st day of April, 1999.

Ernakulam.

D. MOHANARAJAN, Presiding Officer

Appendix

Witness examined on the side of Management :

MW1. Sri. N. Muralcedharan.

Witness examined on the side of Union :

WW1 Sri. Arumughan

Exhibits marked on the side of Management :

Ext. M1. Photo copy of a letter from the petitioner's (workman) authorised representative to the Asstt. Labour Commissioner (C), Cochin dated 15-5-1992.

Ext. M2. Photo copy of another letter from the union to the Asstt. Labour Commissioner (Central) Ernakulam dated 17-9-91.

Ext. M3. Photo copy of a letter from the union to the Asstt. Labour Commissioner (Central), Ernakulam dated 5-10-87.

Exhibits marked on the side of Union :

Ext. W1. Photo copy of Casual Labour Service Card issued to the workman Sri. K. C. Arumughan by the Southern Railway.

Ext. W2. Minutes of Joint discussion held on 10-5-1993 before the Asstt. Labour Commissioner (Central), Cochin, over the dispute between the management and the workman.

नई दिल्ली, 20 मई, 1999

का. आ. 1707.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ओ. एन. जी. सी. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गुवाहाटी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-05-1999 को प्राप्त हुआ था।

[सं. एल-30011/17/93-आई. आर. (मिसिल)]

श्याम सुन्दर गुप्ता, डैस्क अधिकारी

New Delhi, the 20th May, 1999

S.O. 1707.—In pursuacne of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Guwahati as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s ONGC and their workman, which was received by the Central Government on the 19-05-1999.

[No. L-30011/17/93-IR(Misc.)]

S. S. GUPTA, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, GUWAHATI ASSAM

Reference No. 1(C) of 95.

Present :

Shri K. Sarma, LL.B.,

Presiding Officer

Industrial Tribunal, Guwahati

In the matter of an Industrial Dispute between :

The Management of O.N.G.C., Dhansiri Valley Project, Jorhat, Assam.

Versus

The General Secretary, DVP, O.N.G.C., Worker's Association, Jorhat.

Date of Award : 6-5-99.

AWARD

This is a reference made under section 10(1)(d) of I.D. Act, 1947 by the Desk Officer, Govt. of India, Ministry of Labour under order No. 30011/17/93-IR(Misc)/COAL-I dated 23-11-94, to adjudicate the dispute arising between management of O.N.G.C., Dhansiri Valley Project, Jorhat, Assam and their workmen represented by Dhansiri Valley Project, O.N.G.C. Worker's Association, Jorhat on the following issues :—

"Whether the action of the management of O.N.G.C. Dhansiri Valley Project, Jorhat in denying enhanced wage rates to contingent, casual

workers is justified? If not, to what relief these categories of workers are entitled?"

On receipt of the reference this tribunal has registered a case and issued notice to both the parties to file their written objection and to exchange documents in support of their case, in response to which both the parties have filed their written statement/Addl written statement alongwith their documents.

After filing written statement both the parties have adduced oral evidence in support of their respective contention made in the written statement and also exhibited some documents.

The fact of the case as revealed from the materials on record is that the Worker's Association, O.N.G.C., Jorhat Valley Project had made demand for paying their workmen enhanced rates of wages on the following rate.

1. Unskilled Rs. 50/- per day.

2 Skilled Rs. 60/- per day.

3 Driver Rs. 63/- per day.

As per direction of the Asstt. Labour Commissioner (Central) Dibrugarh vide its letter dated 13-11-92, exhibit 1 in this case, the management has not paid the aforesaid wages to the workmen on the ground that the workmen demanding enhanced rate of wages on aforesaid rate are not a regular workmen, but contractual labour and hence said rate is not applicable to them It is further contended that an agreement was signed between the Workmen's Association and management on 10-7-93 wherein it was agreed by both the parties that skilled worker should be paid Rs. 43/- per day and unskilled worker should be paid Rs. 36/- per day. In view of this agreement arrived at by the management and the Workers' Association, the management contended that the workmen not being regular but being contractual are not entitled to enhanced rate of wages and management prays for answering the reference against the workmen.

The workmen had contended that that workmen of Dhansiri Valley Project of O.N.G.C. are regular worker had been already held by this tribunal vide award made in reference Case No 1(C) 1989 and said award has been confirmed by the Hon'ble High Court, Guwahati vide judgement dated 5-8-93 in Civil Rule No. 1907/88 filed by the management challenging the aforesaid award passed by this tribunal. It is further contended that in the award made by the tribunal in aforesaid reference case, almost all 264 workers had been declared as regular worker and they are the workmen who have claimed enhanced rate of wages which is subject of reference in this case. As the workmen has been declared to be regular workmen by the tribunal and government has directed the management to pay the enhanced rate of wages on the rate already mentioned above vide letter dated 13-11-92 ext. 1 in this case, under such circumstance, the refusal on the part of the management to pay the enhanced rate is beyond the purview of law and constituted an Industrial Dispute to be decided by the tribunal.

I have heard the argument put forward by the learned advocate for both parties. The learned advocate for the management had made submission in the light of the contention made in the written statement and that of representative of the union who has defended the case on the ground raised in their pleading. After hearing both the parties, I have gone through the documents filed by the parties and evidence adduced therein and found that the workers' Association of the Dhansiri Valley Project of the O.N.G.C. has been declared as regular workers by this tribunal in the award made in reference case 1(C) 989 and same has been confirmed by the Hon'ble High Court, Guwahati. In said reference, a list of 264 workmen has been enclosed and they were declared regular workers. In the present case although no list of workers has been filed but some association who has represented the earlier case has also represented the present case This being so, there is no doubt that the workers who have been declared regular workers by this tribunal in aforesaid reference case are the workers in the present case claiming enhanes rate of wages. If any of the workers was not a party in earlier reference, but they are working in the same line or same work with that of those mentioned in the earlier list, are also entitled to benefit of the award made by the tribunal.

The next question to be decided is whether the workmen are entitled to enhanced rate of wages claimed by them. It is true that a settlement was made between management and Workers' Association on 10-7-93 accepting rate of wages @ Rs. 43/- per day for the skilled workers and Rs. 36/- per day for the unskilled worker when the original rate of wages for skilled an unskilled worker was Rs. 37.50 and Rs. 31.25 respectively. But when the government have enhanced the rate of wages to Rs. 50/- per day for the unskilled workers and Rs. 60/- per day for the skilled workers and Rs. 63/- per day for the driver, the regular workers are entitled to wages an aforesaid rate. Although the management has informed the government vide it letter dated 13-11-92, ext. 2 in this case that the workers demanding enhanced rate of wages are contractual workers not being engaged by them, but such contention can not be accepted in view of the fact that the workmen demand enhanced rate of wages had already been declared regular by the tribunal vide award already referred to herein above. The agreement dated 10-7-93 can not stand as a barrier for paying enhanced rate of wages because the government has enhanced the rate of wages to the aforesaid time wide ext. 1 letter dated 13-11-92. From perusal of the aforesaid letter it is found that the rate of wages was enhanced on 8-11-91 and 19-12-91 vide order No. 27(1)91-RI and the workers demanding enhanced rate are apparently regular worker and Govt. has fixed the rate of wages to be paid and directed management vide aforesaid letter to pay the enhanced rate, there is no reason why and management should not pay enhanced rate of wages to the workmen.

From what has been stated above I hold that the workmen are entitled to enhanced rate of wages on the rate mentioned herein above and this reference is accordingly answered in favour of the workmen. The management is directed to pay the wages on aforesaid rate from the date on which it false due.

I give this award on this the 6th May, 1999 under my hand and seal.

K. SARMA, Presiding Officer

नई दिल्ली, 20 मई, 1999

का. आ. 1708.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एच. पी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-99 को प्राप्त हुआ था

[सं. एल-30012/17/90-आई. आर. (मिसिल)]

श्याम सुंदर गुप्ता, डैस्क अधिकारी

New Delhi, the 20th May, 1999

S.O. 1708.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s.HPC Ltd. and their workman, which was received by the Central Government on 19-5-1999.

[No. L-30012/17/90-IR(Misc.)]

S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 10th May, 1999.

PRESENT : JUSTICE R. RAMAKRISHNA
PRESIDING OFFICER

C.R. NO. 53/1990

I PARTY	II PARTY
Shri Ashok Holker	(1) The Senior Regional Manager,
R/o. Hanuman Nagar,	Hindustan Petroleum
Old Jewargi Road,	V/s. Corpn Ltd.,
Gulbarga-535 102	P.B. No. 53, Belgaum-590016
	(2) The Senior Depot Superintendent, Hindustan Petroleum Corpn. Ltd., Gulbarga P.O.-535 102

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-30012/17/90-IR(Misc.) dated Nil, Sept. 1990 on the following schedule :

SCHEDULE

"Whether the action of the management of Hindustan Petroleum Corpn., Ltd., Gulbarga in terminating the services of Shri Ashok Holkar, Casual worker w.e.f. 9-11-1989 is justified ? If not, to what relief the workman is entitled to?"

2. This reference is made at the instance of the first party. The case made out by the first party is that he was appointed on daily wages as a Casual Employee in the month of January 1985 by the Depot manager at Gulbarga. From 1985 he has worked continuously for more than 5 years. He was paid more than Rs. 600/- per month as wages. He worked continuously as stated above and though he was entitled for regularisation as permanent employee, the same was not made

3. During 1989 the Depot manager was changed and the new manager removed the first party from service w.e.f. 9-11-89. After 3 months the first party wrote a letter to re-instate him but he received a strange reply from the management. According to him the eligibility for regularisation due to continuity of service for 5 years and his removal amount to victimisation, unfair labour practise and exploitation of workman. He has prayed for an order of re-instatement, back wages and other consequential reliefs.

4. The second party has specifically contended that the first party was given work on casual basis when the exigencies warranted, such as absent of regular workman and other casual exigencies of work. They have stated that the first party worked from 1987-1989 intermittently for a total number of 95 days, and he never worked continuously for 5 years or 240 days and more in any given year.

5. It is their further contention that this Depot has an approved non-management strength of 6 workmen comprising of one clerical and 5 labour positions. The recruitment is governed by recruitment rules and one has to fullfil the conditions laid there on for a permanent job and the name shall be sponsored through employment exchange.

6. It is further contention of the second party that the first party is not entitled to any relief and in any case if his name is sponsored by employment exchange he would be considered favourably.

7. Since there was no scope for framing any additional issues the parties were directed to lead their evidence on the points enumerated in the schedule.

8. The second party examined a Depot Manager, as the manager who was working at relevant point of time is not

available as he was absconded for a long period. This witness gave evidence on the basis of records maintained by the second party. According to his evidence the first party was not appointed by the Corporation but he has worked as Casual Labourer. He was entrusted to do sundry works whenever the regular employee used to be on leave. The first party also entrusted to make bank deposits. He has worked 7 days during 1987, 53 days during 1988 and 35 days during 1989.

9. In support of this contention he has submitted a note book Ex-M-2, as there was no muster roll in respect of the first party.

10. As against this evidence the first party has deposed that he was appointed during the month of January 1985 and he has worked for a period of 5 years. He was drawn a salary of Rs. 600/- per month. His job was to prepare Bank Deposit Slips in the morning and carry the same to the respective Banks. After returning he used to work as Helper. he was also filling the tanks and recorded the readings.

11. At this instance the bank deposit slips were summoned and the duly sealed cover is opened in the court. On the basis of the evidence of the first party the first Bank Deposit Slip was marked as Ex-W-1 and his signature was marked as Ex-W-1(a).

12. He has further deposed to evidence his long service the then Depot Manager has issued the certificate. He has also produced letters of correspondence made with the second party. Since he was not taken to work He has raised a conciliation and Ex-W-11 is the failure report.

13. On a perusal of the proceedings the case required to be appreciated on both the oral and documentary evidence. Since the direct evidence is not available we have to rely on the several circumstances available in this case. If we take the list of documents. Ex-W-1 is a Bank Deposit Slip dated 3-4-1987 which was prepared by this workman. To evidence this fact his signature at Ex-W-1 (a) is marked. Ex-W-2 is another slip dated 31-3-1989. Ex-W-7 and Ex-W-10 are the representation given by him to the Chief Manager, Bombay and Regional Manager, Belgaum dated 12-2-1990 and 17-12-1990 respectively. He has reiterated the claim averments in these notices. Ex-W-3 is a certificate said to have been issued by one Shri Perumal, Depot Superintendent for the period 15-5-1984 to 7-9-1985. Some photos also produced by the first party to evidence that he was fully associated with the second party throughout. Ex-W-12 is a failure report given by the Assistant Labour Commissioner to the Government of India dated 13-6-1990.

14. Shri N.G. Phadke the learned Advocate for the first party has contended that the second party has suppressed the materials evidencing the fact that the first party has worked more than 5 years continuously, but on the contrary they have produced a note book (Ex-M-2) to evidence that they have noted the attendance of first party and other casual employees for the period they have worked. Shri Phadke has questioned the authenticity of the contents in the note book. According to the learned Advocate this was prepared for the purpose of this case as it does not bare the signature of the competent authorities and therfore legally inadmissible. The contention of the learned Advocate deserves to be considered as this note book on its own does not reflect the true state of affairs. If one want to rely on this note book there should be corroborative evidence to accept this as a piece of evidence.

15. The discussions so far made does not carry us to any conclusion, to appreciate the case made out by the parties. It is in evidence that the first party worked as Casual employee for some time, but he has failed to prove that he has worked for 5 years continuously without any break of service and he has also worked more than 240 days in a given year.

16. Shri. Phadke the learned Advocate on the basis of these materials submitted to the court that the removal of this workman squarely falls under Chapter V of Industrial Disputes Act and therefore his discontinuation from service amounts to retrenchment. Since the second party is not followed the mandatory directions given in Section 25F of the Act, he is entitled for re-instatement, back wages etc.

17. Since we are not able to reach to any conclusion as the materials placed is as vague as anything. I examined the Bank Deposit Slips produced in this case. These particulars is for the years 1987, 1988, 1989 and few months of 1990. Since the first party is directly relied on this bank deposit slips claiming himself that he was preparing these slips every day and also marked signature of him in Ex-W-1 as Ex-W-1 (a). I made up my mind to examine these bank deposit slips to appreciate the stand taken by the first party Since these bank deposit slips starts from 1987 onwards the contention that the first party worked from 1985 onwards does not hold any water. I made a random verification of these documents. The first bundle starts from 29-4-1987 onwards. I got it examined on the basis of the signature available in this bank deposit slips. The first bundle starts from 1-4-1987 to 29-4-1987. The signature of first party is found on 18-4-1987, 20-4-1987, 21-4-1987, 22-4-1987, 23-4-1987, 24-4-1987, 25-4-1987, 27-4-1987 and 29-4-1987 for 9 days. During October 1987 he has not prepared any bank deposit slips. In September 1987 he has prepared the bank deposit slips on 17-9-1987, 23-9-1987, 24-9-1987 only. This indicates that he has worked for 3 days. During November he has prepared the Bank Deposit Slips on 6-11-1987, 7-11-1987 only.

18. After examining these Bank Deposit Slips, assuming that the first party was entrusted only this work as part of working days is not more than 7 to 8 days for one month. In some months he has not prepared the Bank Deposit Slips at all. Since the first party failed to prove that he has worked for period of 5 years continuously and also for than 240 days in a given year it is very difficult to rely on his oral testimony. The Bank Deposit Slips which were summoned on his

instance infact made his case miserable.

19. In these circumstances I am not inclined to rely on the plethora of judgement submitted by the learned Advocate for the first party. These judgements reflect as to what is retrenchment and what should be that order of the tribunal, if a person is retrenched without following Chapter V of the Industrial Disputes Act.

20. In view of these circumstances it is to be held that there is no termination of service of the first party by the second party. Since the very reference does not make any sense no findings can be given, on the schedule. It is the bounded duty of the first party to prove the contentions taken by him only on that proved principles a conclusion may be reached in his favour.

Having regards to these facts and circumstances this reference fails the same is here by rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 10-5-1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 20 मई, 1999

का.आ. 1709.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल वेयरहाऊसिंग कारपोरेशन के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20 मई, 1999 को प्राप्त हुआ था ।

[सं. एल.-42012/3/95-आई.आर.(विविध)]

बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 20th May, 1999

S.O. 1709.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Warehousing Corporation and their workman, which was received by the Central Government on 20-5-99.

[No. L-42012/3/95-IR (Misc)]

B.M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,

TAMIL NADU CHENNAI

Tuesday, the 22nd day of December, 1998

Present : Thiru S. Ashok Kumar, M.Sc., B.L.,

Industrial Tribunal

INDUSTRIAL DISPUTE NO. 40 OF 1995

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the Workmen and the Management of Central Warehousing Corporation, Chennai).

Between

The workmen represented by

The General Secretary,

C.W.C. Employees Union,

C/o. Central Warehouse, Bye-pass Road,

Madurai-625 016.

Vs.

The Regional Manager,

Central Warehousing Corporation,

Regional Office, 153, Oldams Road,

Madras-600 018.

Reference : Order No. L-42012/3/95-IR(Misc), Ministry of Labour, dated 26-7-95, Govt. of India, New Delhi.

This dispute coming on for final hearing on Monday, the 14th day of September, 1998, upon, perusing the reference, claim, counter statement and all other material papers on record, upon hearing the arguments of Thiru V. Prakash, advocate appearing for the petitioner-union and of Thiru P. Narasimhan, Advocate appearing for the respondent-management, and this dispute having stood over till this day, this Tribunal made the following.

AWARD

This reference has been made for adjudication of the following issue :

> "Whether the action of the management of Central Warehousing Corporation in refusing to pay H.R.A., C.C.A. and fixed D.A., w.e.f. April, 1994 in respect of the Personal pay paid for adopting small family norms and Special pay paid to the employees is justified? If not, to what relief they are entitled?"

2. **The main averments found in the claim statement filed by the petitioner union are as follows :**

The respondent corporation is a public sector undertaking constituted under the Central Warehousing

Corporation, Act 1962 and it has got its own service regulations viz., Central Warehousing Corporation (Staff Regulations 1986) for its employees in matters of conditions of service, pay and allowances, conduct, discipline etc. The petitioner union is the only union representing group 'C' and 'D' employees of the respondent corporation and is the sole bargaining agent for them Petitioner union enters into memorandum of understanding with the respondent management with regard to wage structure and other demands therefor. From 1983 the respondent corporation is paying HRA. CCA and the benefits of fixed Dearness Allowance in respect of special increment granted for adopting small family norms, special pay for dusting operators and Cash handling allowance for the Warehousing Assistants throughout the country. On 9-1-92 the management and the workmen entered into memorandum of understanding with regard to revised wage structure and other demands for Group C and D employees where one of the clauses is that the existing benefits and facilities not altered by this agreement shall continue hitherto subject to any direction from Government of India. From April 1994 onwards the respondent management unilaterally stopped HRA, CCA and fixed dearness allowance in respect of personal pay to the concerned employees against which the petitioner union raised a dispute. About 200 employees in the Chennai region are getting special increment for adopting small family norms. About 35 employees in the cadre of dusting operators are getting special pay and about 32 employees in the cadre of Assistants in the warehousing corporation are getting cash handling allowance. The respondent has cut their salaries by the above decision. Before the conciliation officer, the respondent management has taken a stand that the personal pay is not part of the pay under Fundamental Rule 9 (21) (a) and that H.R.A., C.C.A. and F.D.A. is payable on Basic pay only and therefore claim of the petitioner union is untenable. The conciliation ended in failure. The contention of the Management that the special pay paid for adopting small family norms, cash handling allowance and special pay are not part of the pay, is unsustainable in law. Regulation 2 (j) of the Central Warehousing Corporation (Staff) Regulations defines pay as follows :—

> "(J) "Pay" means the amount drawn by an employee as pay, special pay, personal pay and any other emoluments excluding allowances, which may be specifically classified as pay by the Board of Directors".

Therefore the special pay forms part of the pay and H.R.A., C.C.A. and F.D.A. has to be paid on a special pay.

3. The reference by the respondent management to letters from Head Office in Ref. Nos. CWC/Wage-Implementation/92 dated 20-11-92 and Ref. NOS. CWC/ Wage-Implementation/92 dated 21-1-93 for denying the benefits to the workman is unsustainable in law as those letters are without authority and without sanction from the Government. Further the issual of the directions by the Head Office to the Regional Office is contrary and violative of the provisions of the Central Warehousing Corporation (Staff) Regulations and are therefore void ab-initio and non-est in law.

On 22-6-88, the Special Pay and other allowances were revised with effect from 1-4-88 by an order in Ref. No. CWC/ I-SPL-PAY/RECTT dated 22-6-88. In the said orders also it has not been stated that H.R.A., C.C.A. and F.D.A. on the special pay was there at that point of time, it would have been clearly granted to the employees and all of a sudden the respondent cannot unilaterally stop the payment and such an action is illegal. The non-compliance of mandatory procedure laid down under Section 9-A of the I.D.A., before stopping the benefits of H.R.A., C.C.A. and F.D.A. on the special pay and other allowances makes the action of the respondent management illegal and void ab-inito. The stoppage of the benefits of H R.A., C.C.A. and F.D.A. on the special pay amounts to failure to implement the Memorandum of Understanding dated 9-1-92 which is the settlement between the management of the respondent corporation and the workmen. This action is an unfair labour practice under Sl. No 13 of the first part of the fifth schedule to the I D. Act, which is an offence punishable under Section 25 T and U of the I.D. Act. Therefore the action of the respondent in stopping H.R.A., C.C.A. and F.D.A. on the Special Increment granted for adopting small family norms, cash handling allowance, Special pay and other allowances to its employees is not justified The petitioner prays to pass an award directing the respondent management to pay the benefits of H.R A., C.C.A and F.D A and the special increment granted for adopting small family norms, cash handling allowance, special pay and other allowance to the employees of the respondent corporation from April, 1994 onwards.

3. **The main averments found in the counter statement filed by the respondent are as follows :**

The policies are framed by the Corporate office of the respondents with the approval of the Board of Directors. The policy decisions are taken on the basis of Government Guidelines/Instructions. In the staff regulations of the respondent's organization, it has been specifically interpreted under the Clause (3) that in case of any doubt or difficulty arise in interpreting these regulations or giving effect to them or any lacuna, inconsistency or anomaly is discovered in their application, it shall be open to the Board of Directors to issue general instructions not inconsistent with the provisions of the Act and the rules framed thereunder. The respondent corporations had signed a Memorandum of Understanding over Second Wage Revisions with the apex body of CWC Employees Union, hereinafter referred to as Federation of CWC Employees' Union, Under Clause 3.8 of the said Memorandum of Understanding, the FDA has been fixed on the basis of Basic pay range and from the contents of clause 3.8, reference can be taken that FDA

is payable on basic pay only. The parties to the Memorandum of Understanding had agreed under Clause 7.3 that the existing benefits and facilities not altered by the agreement shall continue as hitherto subject to any directions of the Government of India. It was further agreed to, under Clause 7.4 that none of the demands raised by the Federation of CWC Employees Union in its charter of demands, shall form a point of industrial disputes during the period of the Settlement (5 Years) effecting from 1-8-87. The Federation agreed not to reopen any of this matter provided under the agreement or to raise any fresh economic demands which involve additional burden on the corporation during the period of the agreement. The definition of (PAY) has clearly been defined under FR/SR. The definition of 'Pay' defined in the FR/SR is reproduced as under ' Pay means the amount drawn monthly by a Government servant as (i) the pay, other than special pay or pay granted in view of personal qualifications, which has been sanctioned for a post held by him substantially or in any officiating capacity or to which he is entitled by reason of his position in a cadre. In view of the definition of 'Pay' the personal pay is not to be taken into account for drawal of HRA & CCA etc. The Government of India, Ministry of Industry (BPE) has clarified vide OM. No 1 (3)/92-BPE (WC) dated 12-6-1987, that HRA is payable on basic pay. The matter has further been clarified in item No. 8 that HRA/CCA is payable on basic pay and special pay and the personal pay will not form part of the pay for this purpose. The petitioner union is not the only union representing Group 'C' and 'D' employees nor sole bargaining agent. Petitioner union never entered into memorandum of understanding on wage revision with the respondent. The respondents had paid the HRA/CCA on personal pay and special pay due to oversight of the Government instructions contained in OM. dated 12-6-1987 which has been rectified at a later stage. The respondents have implemented the instructions issued by the Government of India, in regard to payment of HRA/CCA. The respondents have rectified the irregularity. The rest of the contentions are matters of record, which will be produced as and when necessary to be produced before this Tribunal. The respondents have implemented the Government instructions to regulate the payment of HRA/CCA and basic pay and rectified the mistake. The respondents have not violated the contents of Memorandum of Understanding signed on second wage revision. The provisions of FR/SR have been complied with alongwith the Government's guidelines. The respondent prays to reject the demands made by the petitioner

4 No witness was examined on behalf of both sides. Ex M 1 to M 5 have been marked on behalf of the respondent management.

5 The point for consideration is : Whether the action of the management of Central Warehousing Corporstion in refusing to pay H.R.A., C.C.A., fixed D.A., w.e f. April 1994 in respect of Personal pay paid for adopting small family norms and Special pay paid to the employees is justified? If not, to what relief they are entitled?"

6. **The point** : The petitioner union represents Group 'C' and 'D' employees of the respondent Corporation which is a public sector undertaking constituted under Central Warehousing Corporstion Act, 1962. About 200 employees in the Chennai region are getting special increment for adopting small family norms. About 35 employees in the cadre of dusting operators are getting special pay and about 32 employees in the cadre of Assistants in the Warehousing Corporation are getting cash handling allowance. From 1983 onwards the respondent corporation is paying House Rent allowance, city compensatory allowance and the benefits of fixed dearness allowance with respect to special increment granted for adopting small family norms, special pay for dusting operators and cash handling allowances for Warehousing Assistants throughout the country. On 9-1-92, the respondent management and various federations of the workmen entered into Ex. M. 1, Memorandum of undertaking with regard to the revised wage structure and other demands for group 'C' and 'D' employees working under the respondent management. Clause 7.3 of the said Memorandum of undertaking reads as follows :

> "Excepting benefits and facilities not altered by this agreement shall continue as hitherto subject to any directions of the Government of India."
>
> Under Clause 7.5 of the said memorandum of undertaking,
>
> "This agreement shall be in force and binding on the parties upto 31-7-92 and thereafter also continue to remain binding on the parties until it is terminated by either party by giving in writing two months notice of its intention to do so."

On 20-1-93, the respondent corporation issued Ex. M2 order regarding fixation of pay in the revised scale of pay in respect of group C and D employees consequent upto the second revision of pay scales and also memorandum of undertaking Ex. M.1 and also clarified several doubts raised on various issues. Under para 8 of the said clarification, the respondent has issued the following order.

DOUBT	CLARIFICATION
8. Whether payment of HRA/CCA w.e.f. 1-8-90 with revised basic pay is subject to monetary ceiling, and whether they are to be calculated on basic pay only or should include special pay, personal pay etc.	In this connection, para 7 of circular No. CWC/wage Implementation/92 dated 20-11-92 may be referred to, so far as, monetary ceiling is concerned, we have already issued a circular dated 9-8-88 to this effect wherein the ceiling in regard to HRA and CCA has been fixed at Rs. 1000 and Rs. 100 respec-

tively. HRA & CCA are payable only with reference to the Basic pay of the employee. Special pay and personal pay will not form part of pay for this purpose. As regards upper ceiling circular dated 9-8-88 may be referred to.

From April 1994 onwards, the respondent management stopped the payment of HRA, CCA and fixed dearness allowance, in respect of special increment granted for adopting small family norms, special pay for dusting operators, and cash handling allowance for the warehousing assistants. The order stopping such payment has not been produced before this Tribunal by either party. The contention of the petitioner union is that pay includes personal pay and special pay and therefore, House Rent allowance and City Compensatory Allowance and benefit of Fixed dearness allowance should be calculated with respect to comprehensive pay which includes basic pay, personal pay and special pay and cash handling allowance. The petitioner union has further contended that the respondent did not put the employees on notice about the stopping of such payment as required under Section 9A of the I.D. Act. The contention of the respondent management is that under Fundamental Rules, the pay has been defined as follows :

> "Pay means the amount drawn monthly by a Government Servant as (i) the pay, the other than special pay or pay granted in view of personal qualifications, which has been sanctioned for a post held by him substantially or in an officiating capacity or to which he is entitled by reason of his position in a cadre."

The respondent management has got its own service regulations viz., Central Warehousing Corporation (Staff) Regulations 1986. Under Regulation No. 2 (j) pay has been defined as follows :

> "Pay" means the amount drawn by an employee as pay, special pay, personal pay and any other emoluments excluding allowances, which may be specifically classified as pay by the Board of Directors."

As per the defintion enumerated in the regulations applicable to the respondent pay includes, special pay, personal pay and other emoluments excluding allowances. Therefore, as per the definition pay includes special pay as well as personal pay but does not include any allowances i.e. cash handling allowances in this case. Therefore, the employees who are getting special pay or personal pay in the form of special increment for adopting small family norms and employees who are getting special pay in the cadre of dusting operators are entitled to get the H.R.A., C.C.A and fixed dearness allowance with respect to special pay as well as personal pay.

The respondent has all of a sudden stopped payment of House Rent Allowance and City Compensatory Allowance and Fixed dearness allowance without issuing a notice to the employees as required under Section 9A of the I.D. Act, 1947. In 1985 II LLFP 5. **WORKMEN OF FOOD CORPORATION OF INDIA Vs. FOOD CORPORATION OF INDIA** wherein the present respondent was also a respondent, the Hon'ble Supreme Court has held as follows :

> "It is at this stage necessary to examine the implication of Section 9A of the I.D. Act, 1947. As hereinbefore pointed out, Section 9A makes its obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule to give a notice or intended change. It cannot do so without giving to the workmen likely to be affected by the change, a notice in the prescribed manner of nature of change proposed to be effected and within 21 days of giving such notice. There is a proviso to Section 9A which has no relevance here. However, incidentally it may be pointed out that if the workman likely to be affected by the change are persons to whom the fundamental and supplementary rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised leave rules, Civil Services Regulations, Civilian in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment code or any other rules regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply to notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent corporation to urge that any of the aforesaid rules would govern the conditions of services of the workmen involved in the dispute. Now after introducing direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in the Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides "wages, including the period and mode of payment." By cancelling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change, was 'must' before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Section 31 (2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective."

In the light of the above mentioned judgement of the Hon'ble Supreme Court the respondent is bound to give notice regarding alteration of or stopping of House Rent

allowance, City Compensatory allowance, and fixed dearness allowance with respect to personal pay and special pay. But the respondent has not followed the mandatory procedure adopted in Section 9A of the I.D. Act, 1947. Therefore, it is clear that the order of the respondent management in Ex. M.2, denying payment of House Rent allowance and City Compensatory Allowance, and FDA on the basis that the special pay and personal pay will not form part of pay for the said purpose is not sustainable in law.

In the result, award passed holding that the action of the respondent management in refusing to pay HRA, CCA and FDA with effect from April, 1994 in respect of personal pay paid for adopting small family norms and special pay for dusting operators is not justified, and consequently employees who were paid such emoluments earlier are entitled for H.R.A., C.C.A. and fixed Dearness Allowance in respect of the Personal pay for adopting small family norms and Special pay continuously. Award passed. No costs.

Dated, this the 22nd day of December, 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Workmen side : NIL.

For Management side : NIL.

DOCUMENTS MARKED

For Workmen side : NIL.

FOR MANAGEMENT SIDE

Ex. M1./22-1-92	Memorandum of Understanding arrived between the management of the Central Warehousing Corporation & their Workmen.
Ex. M2./21-1-93	C.W.C. letter regarding fixation of pay in revised scale.
Ex. M3./9-8-88	Circular No. 77 regarding payment of HRA & CCA.
Ex. M4./12-6-87	Official Memorandum regarding Payment of HRA/CCA, to the executive of public enterprises.
Ex. M5./28-2-86	Gazette of India.

नई दिल्ली, 20 मई, 1999

का.आ. 1710.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.—1, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-99 को प्राप्त हुआ था।

[सं. एल-31011/9/90-आई.आर. (विविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 20th May, 1999

S.O. 1710.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No-1, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bombay Port Trust and their workmen, which was received by the Central Government on 20-5-99.

[No. L-31011/9/90-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

Justice C. V. Govardhan

Presiding Officer

REFERENCE NO. CGIT-31 OF 1991

Parties : Employers in relation to the management of Bombay Port Trust

and

Their Workmen.

Appearances:

For the Management	:	Shri, Umesh Nabar, Advocate.
For the Union	:	Shri. Gurao.
State	:	Maharashtra

Mumbai, dated the 12th day of May, 1999.

AWARD

The Central Govt. by its order dated 04-4-91 has referred the following dispute between the management of Bombay Port Trust and their workmen for adjudication by this Tribunal.

"Whether the management of Bombay Port Trust, Bombay were justified in recovering the wages of the

workmen of General Works, MOT Division of Chief Engineers Dept. for the period:—

26th to 28th Sept. 88 1st, 5th, 12th, 26th October, 1988; 4th, 5th, 18th and 30th Nov. 88, 8th, 13th 14th, 15th and 17th Dec. 88. If not, to what relief are the workmen entitled?".

2. The averments in the Claim statement are as follows: The Chief Mechanical Engineer of B.P.T. has awarded certain contract to some outside Agency for laying a new 36" M.S. pipe line from Valve Station to the Fourth Oil Birth at Marine Oil Terminal Jawahar Dweep (Butcher Island). The laying of the new pipe line appears to have been completed in the month of July/August 1988. During the trials run pressure test of the said pipe line due to the defective planning, inefficient engineering skill of the Contractors, absence of proper precaution the anchorage of the Cement concrete which was existing in the Island was broken by the Contractors and damage to the tune of lakhs of rupees was caused. The workers as well as the Union approached the employer to fix the responsibility on the Contractor and to take suitable penal action on them. Instead of taking action against the Contractor, officials of the employer with a view to help contractor attempted to hush up the matter. The workers were promised over time of work under the direction and supervision of the contractor. The workers refused to do so. The management simply declared 'No work No pay' to the workmen. The workers did not refused to work and they were ready and willing to work under the supervision of the B.P.T. The union had written letters on 18-6-1988 to the Administration about Merchants Navy Club cleaning. The Administration has stated that Merchant Navy Club was not under their control and that they have no control at all, The supervisors of the CE ordered working and cleaning on the Merchant Navy Club by the workers irrespective of their categories. The Union sent a reply. The Administration forced the Painters and Fitters and other staff to attend to the work without providing the Navganis, safety belts etc. The workers demanded proper assistance of Navganis, safety belts etc. They were treated on No work No pay basis. During the month of Oct/Nov 1988 five khalasis and one tandel were deputed to do some work, which work was never done by the said workmen, which work was done by somebody else. This was sought by the officials with a view to harass the workers. The action taken by the Administration of the Respondent in deducting wages for the period is illegal and against principles of natural justice. Hence the applicants prays that deduction of wages can be declared as illegal and to direct to pay the wages deducted by the respondents.

3. In the written statement, the Employer contends as follows:

The issues involved for deduction of wages are different from each other and for each separate wage periods but the same are covered under one reference before this Tribunal. The claim is filed as if it is an application under Section 33(c) (2) of the I.D. Act, but deduction of wages has been effected on the basis of 'No work No pay'. The union has admitted that the workmen have not worked on the days in question. The deduction of wages is therefore legal, proper and justified In the month of September, 1988 an anchor block provided on the approach caisson of fourth oil berth at Jawahar Dweep. This work involved bending of reinforcement bars One Fitter of the General Works, refused to do it due to the fear that he may receive burn injuries. The bars were therefore got bent to the required shape with the assistance of contractors labour and sent to the approach caisson for being incorporated in the extension to the Anchor block. On seeing the bent bars at the site, the fitters refused to carry out the further work of shuttering etc. in protest in getting the work done through contractor. On 26-8-88 all other workmen numbering 40 stopped their work at Jawahar Dweep. As regards the dates of December, 1988 the workers stopped their work for the demand of granting overtime wages on all Saturdays and lunch time on all days to all the workmen of the Department. The employer did not agree to the said demand on a permanent basis. The workmen therefore, refused to carry out the work on 8th, 13th to 15th and 17th December 1988. Their wages for the said dates were deducted as No work, No pay. Safety belts and navganis were provided to the workers. The allegation that they made a demand and employer did not provide them is not correct. Five posts of khalasis and one post of Tandel are provided for operating Jolly boats. They are seasonal posts, which were made regular The workmen on the Jolly boats refused to operate the boats for other BPT departments. They refused to carry out their regular work on 1st, 5th, 12th and 21st of October, 1988 and on 4th, 5th 18th and 30th November, 1988. Therefore, their wages were not paid on these days. The claim of the workmen are not real. The workmen are not entitled to any relief.

4. The point for consideration is whether non-payment of wages for the dates mentioned in the schedule during September to December 1988 is justified. If not, to what relief the workmen are entitled to.

The Point:

The workmen have come forward with a claim statement contending that they were not paid their wages for the days mentioned in the schedule of the reference and therefore, it must be declared that non-payment of wages for those days is illegal and a direction be given to the management to pay the wages with interest. Two reasons are given by the workmen as to why wages were not paid for the above dates. The first is the workmen were directed to work under the supervision of the contractor and they are not bound to work under the contractor and therefore, they are justified in refusing to do the work, in Butcher Island and as well as Marine Navy Club. The other ground is that their request for providing Navganis and safety belts were not complied by the management and they were directed to work without providing

these safety instruments and therefore, they are justified in not working during the days in which safety instruments are not provided. In para 7 of the claim statement union has stated that deduction of wages has been effected on the basis of 'No work, No pay' and the Union has admitted that the workmen have not worked on the days in question. In the letter addressed by the Union to the Regional Labour Commissioners also it is stated by the union that they have instructed the members not to do the work under the supervision of the contractors and they have further instructed the members not to accept the salaries. These letters are dt. 25-6-88 and 28-6-88. In the written arguments filed by the applicant also it is stated that to bail out the contractors some of the officials of the management took brief on behalf of the contactors and hurriedly went ahead with repair work of the serious damages at Buthcher Island and it was not at all the duty of the workmen to work at the damaged site and when the workmen opposed the open support to the contractors they were treated on the basis of 'no work no pay'. Similarly in para 5 of the arguments it is stated with regard to the non-payment of wages to Tandel, the refusal of work is beyond the scope of the season and the said categories of workmen ought not to have been forced when it was not the season. It is thus seen that the workers did not do their work on the relevant dates is not in dispute at all by them in their claim statement, documents and affidavit; but during cross-examination the only witness examined on behalf of the wokmen has given a go-bye to the case of the Union that they did not work on the relevant dates. In the claim statement and in the documents, the Union which admits that the workers have not done the work have justified their action by contending that they cannot work under the supervision of the contractor, they cannot do the work of the contractor etc. But during cross-examination WW-1 the only witness examined has stated that they have worked on all the dates mentioned in the reference namely 26th to 28th September, 1st April to 12th April and 26th October, 13th, 14th, 15th, 17th December etc. WW-1 has stated that he did not stated in his affidavit to the effect that workers refused to do the work. He has further stated that work assigned by Mr. Redkar, Chargeman, were performed by the workers and it is wrong to say that they did not perform the work on the relevant dates in October '88. It is further stated by him that he did not say in his affidavit that they did not work because they have not been supplied Safety kits and that their say is that they did work on the aforesaid dates of October '88 also. According to WW-1 it is wrong to suggest that they did not perform their duties on the relevant dates mentioned in the schedule in December '88. He has further stated that he meant to say that they performed all such work as was assigned to them by the Chargeman. As regards the not plying of Jolly boat is concerned he has stated that it is wrong to suggest that Jolly boat plyers did not ply jolly boat on the four days in November, 1988 and that they have done the work assigned to them on all the four days. It is thus seen that the only witness examined on behalf of the Union has given a go-bye to the version of the Union that the worker did not do their work on the relevant dates for justifiable reasons. According to the witness they have actually worked on those days. I am of opinion that when the only withness examined on behalf of the workmen has chosen to give a go-bye to his version, the contention of the Union that the workers did not do their work on the relevant dates for justifiable reasons cannot be said to have been proved in order to give any relief to the workers. In that view I hold on the point that non -payment of wages of the workmen of general Works MOT Division of Chief Engineering Department, BPT for the relevant dates mentioned in the schedule of the reference is justified for the reasons stated by the management in the written statement and as spoken by the Executive Engineer of the Department as MW-1 and therefore, the Union is not entitled to any relief.

5. An Award is passed dismissing the reference and holding that non-payment of wages for the days mentioned in the schedule to the reference is justified.

C. V. GOVARDHAN, Presiding Officer

नई दिल्ली, 24 मई, 1999

का.आ. 1711.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. मित्रा एस. के. (प्र.) लि., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण भुवनेशवर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-5-99 को प्राप्त हुआ था।

[सं. एल-38011/2/95-आई. आर. (विविध)]

बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 24th May, 1999

S.O. 1711.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Bhubanaswar, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mitra S. K. (P) Ltd. and their workman, which was received by the Central Government on 24-5-99.

[No. L-38011/2/95-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL ORISSA: BHUBANESWAR:

Present:

Sri H. Mohapatra, O.S.J.S. (Sr. Branch).
Presiding Officer, Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 42 OF 1995

Dated, Bhubaneswar, the 12th May, 1999

BETWEEN :

The management of M/s. Mitra SK (P) Ltd.,
At/P.O. Paradip, Distt: Jagatsinghpur.

.....First Party-
Management.

(And)

Their Workman Sri R. C. Nayak,
represented through Utkal Port
& Dock Workers' Union,
Brindaban Housing Complex,
Paradip, Distt : Jagatsinghpur.

....Second Party-
Workman.

APPEARANCES :

None	-	For the First Party Management.
Sri P.K. Kar, Representative.	-	For the Second Party Workman.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication by this Tribunal vide their order No. L-38011/2/95-IR(Misc.) dt. 20-7-95 :—

"Whether the action of the management of M/s. Mitra S.K. (P) Ltd., in refusing employment to Shri R.C. Nayak is legal and justified ? If not to what relief the workman is entitled to ?"

2. The case of the second party as revealed in the statement of claim briefly stated is that the workman Ramesh Ch. Nayak along with another were working as samplers in the Government Laboratory of Mining & Geology Deptt. of Govt. of Orissa at Paradip. The work of sampling was taken over by four sampling companies including M/s. Mitra S.K. (P) Ltd., under an agreement entered into with the said Government organisation. As a logical consequence of the taking over the workmen engaged in the former establishment were to be taken over by the succeeding company which was generally done. Unfortunately, however, the first party management refused to engage Sri Ramesh Ch. Nayak and another for a length of time. There was a bipartite discussion between the Management and the Paradip Port Workers' Union representing the workman in respect of which a minute was drawn up where under it was stipulated that Sri Ramesh Ch. Nayak and another shall be given employment on 13-2-87. The employment continued for a period of eight months whereafter, it is alleged, the first party management refused employment to the second party. It is further alleged that no notice or retrenchment was given nor any notice pay or retrenchment compensation was paid. According to the second party, the termination is invalid.

3. The First party-management was noticed several times to appear and file the written statement but they did not as a result the management was set ex parte as per order Dtd. 15-2-99.

4. In the exparte hearing the union examined the workman who deposed that he was working with the first party from 1973 and was doing the job of sampling of coal, iron and chromite. He was deputed to work in Government Laboratory from 1978 to 1980. He further deposed that the Government Laboratory was abolished in 1985. The proved the bipartite agreement with the first party management as Ext. 1. It is revealed in his evidence that he was receiving wages @ Rs. 560/- per month. He has spoken of refusal of employment which gave rise to the present reference. According to him, he was not served with any notice of termination nor paid any notice pay or retrenchment compensation. It is asserted in the version of the workman that he had put in eight months of continuous service which clearly works out to 240 days. In such circumstance, the workman having served the organisation for a year preceding the termination was entitled to retrenchment notice and retenchment compensation other than notice pay which was payable in lieu of notice. There is no allegation of misconduct as against the second party and the case comes well within the mischief of 'retrenchment' inviting application of the provisions of Section 25-F of the Industrial Disputes Act. In the instant case the workman has asserted that the provision of section 25-F of the Industrial Disputes Act was observed by breach and his services were dispensed with without notice or compensation. He has further deposed that the work of sampling is in progress in the establishment of the first party.

5. In the result, I hold that the termination of service of the second party by way of refusal of employment amounts to "retrenchment" and the action of the management in terminating the services of the second party without complying with the statutory provisions regarding service of notice and payment of retrenchment compensation renders the termination void. The second party consequently is entitled to reinstatement with full back wages from the date of his termination.

The reference is answered accordingly. Dictated & corrected by me.

H. MOHAPATRA, Presiding Officer

नई दिल्ली, 24 मई, 1999

का०आ० 1712.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेमेंड सीमेन्ट चूना पत्थर, खान के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भोपाल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं. एल-29013/1/95-आई०आर ०(विविध)]

बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 24th May, 1999

S.O. 1712.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Bhopal as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Raymond Cement Lime Stone Mines, and their workmen, which was received by the Central Government on the—

[No. L-29013/1/95-IR (Misc)]

B.M. DAVID, Desk Officer

अनुबन्ध

रिफरेन्स नं. 1/आई. डी./95

सीमेन्ट श्रमिक संगठन

द्वारा श्री संबल चक्रवर्ती अध्यक्ष,

श्री ओ.पी. गंगोत्री महासचिव,

श्री राधेश्याम कश्यप कार्यकारी अध्यक्ष,

सीमेन्ट श्रमिक संगठन, गोपाल नगर

जिला बिलासपुर (म.प्र.)। ————————प्रथम पक्ष/

कामगारों का प्रतिनिधित्व करने वाले।

विरुद्ध

श्री आर. सी. सिंह,

एजेन्ट, रेमेंड सीमेन्ट चूना पत्थर खान,

गोपाल नगर जिला बिलासपुर (म. प्र.) ————————द्वितीय पक्ष/

नियोजक का प्रतिनिधित्व करने वाले

पंचाट

29-4-99

1. यह प्रकरण श्रम मंत्रालय भारत सरकार द्वारा उभय पक्ष के मध्य औद्योगिक विवाद अधिनियम, 1947 की धारा 10 (क) की उपधारा (1) के अन्तर्गत विवाचन करार के आधार पर मुझे विवाचक को पंच निर्णय हेतु संदर्भित किया गया था। इसमें निम्नानुसार विचारार्थ विषय निर्धारित हैं:—

विचारार्थ विषय

(क) "क्या 26-11-93 से सर्व श्री बाल्मीक चन्द्राकर, महेश कुमार सिंह, हरिहर सिंह और लालेश्वर तिवारी (सभी खानिक) को नौकरी से बरखास्त किए जाने की रेमेन्ड सीमेन्ट वर्क्स के प्रबंधन की कार्यवाही कानूनी और न्यायोचित है"?

(ख) "यदि नहीं तो संबंधित कामगार किस अनुतोष के हकदार हैं और उनका ब्यौरा क्या होना चाहिए ?"

2. प्रथम पक्ष की ओर से स्वत्व का कथन प्रस्तुत किया जाकर अभिवचन किया गया है कि कर्मचारी द्वितीय पक्ष संस्थान की खादानों में स्थाई सेवा नियोजित थी। चारों ही कर्मचारियों का कार्य संतोषजनक था। सेवा काल में उन्हें कभी भी दंडित नहीं किया गया। कर्मचारियों को पृथक-पृथक जारी आदेश दिनांकित 26-11-93 से चारों कर्मचारियों की सेवायें असत्य एवं बनावटी आरोपों के आधार पर समाप्त कर दी गई। कर्मचारियों को जारी आदेश दिनांकित 26-11-93 अवैध एवं अनुचित है। क्योंकि उन्हें कोई आरोप पत्र नहीं दिया गया। कोई जांच भी उनके विरुद्ध नहीं की गई। यहां तक कि कारण बताओ सूचना पत्र भी सेवा समाप्ति के पूर्व जारी नहीं किया गया। इस प्रकार कर्मचारीगण की सेवायें न्याय के प्राकृतिक सिद्धांतों के विपरीत समाप्त किए जाने से वे पिछले समस्त वेतन के साथ सेवा में पुनः स्थापित किए जाने के अधिकारी हैं। कर्मचारियों की सेवा शर्तों को प्रभावशील स्तरीय स्थाई आज्ञाओं में दंड देने की प्रक्रिया का उल्लेख है जिसमें आरोप पत्र जारी करने, जांच करने पर कर्मचारी दुराचरण का दोषी पाया जाता है तभी उसे दंडित किया जा सकता है। उक्त प्रक्रिया कानूनन आदेशात्मक हैं, किन्तु कर्मचारीगण को सेवा से पृथक करने के पूर्व इसका अनुसरण नहीं किया गया। और इस कारण कर्मचारीगण को जारी सेवा समाप्ति आदेश दिनांकित 26-11-93 अवैध एवं प्रभावशून्य है। और इस कारण कर्मचारीगण पिछले समस्त वेतन के साथ सेवा में पुनः स्थापित किए जाने के अधिकारी हैं। कर्मचारीगण को जारी सेवा समाप्ती आदेश मनमाने होकर अनुचित श्रम नीति एवं प्रताड़ना की नीति का परिणाम है। द्वितीय पक्ष के द्वारा "हायर एन्ड फायर" के सिद्धान्त, जिसे औद्योगिक न्याय निर्णयन द्वारा अनुप्रयोगी बताया गया है, को प्रत्यावर्तित किया गया है। उक्त कर्मचारियों के नियोजन की सुरक्षा को न्याय के प्राकृतिक सिद्धांत के प्रतिकूल विपरीत रूप से प्रभावित किया गया है। कर्मचारीगण के सेवा समाप्ती आदेश निरस्त किए जाने योग्य हैं। कर्मचारीगण को जारी उपरोक्त आदेशों में लगाए गए आरोप एवं उनके कारण असत्य एवं बनावटी हैं। ये आरोप पूरी तरह अस्पष्ट एवं व्हेग, हैं। क्योंकि उनमें विवरण उल्लेखित नहीं हैं। इस प्रकार व्हेग, अस्पष्ट तथा बनावटी आरोपों के आधार पर न तो कोई कार्यवाही की जा सकती है और न ही दंडित किया जा सकता है। कर्मचारीगण के सेवा समाप्ति आदेश में उल्लेखित गतिविधियों में कर्मचारी सम्मिलित नहीं हुए हैं। नियोक्ता को इस संबंध में स्पष्ट प्रमाण देने की आवश्यकता है। कर्मचारीगण की सेवायें शक्तियों के रंगारंग प्रयोग के परिणामस्वरूप दुर्भावनापूर्ण है। कर्मचारियों के साथ भेदभाव की नीति भी अपनाई गई है। इस कारण उन्हें जारी आदेश निरस्त किए जाने योग्य है। प्रथम पक्ष की ओर से यह भी अभिवचन किया गया है कि कर्मचारीगण के सेवा समाप्ति आदेश में लगाए गए आरोपों से कोई दुराचरण नहीं बनता है। इस आधार पर भी सेवा समाप्ति आदेश निरस्त किए जाने योग्य है। यह भी अभिवचन किया गया है कि कर्मचारीगण की

निष्कलंक सेवा अवधि के प्रकाश में उन्हें सेवा से पृथक करने का दंड अत्याधिक है। कर्मचारीगण सेवा समाप्ति के बाद से ही कहीं भी नियोजित नहीं हैं और वे बेरोजगार है। प्रथम पक्ष की ओर से सहायता चाही गई है कि कर्मचारीगण को जारी सेवा समाप्ति आदेश 26-11-93 अवैध एवं अनुचित निर्णित किये जाकर उन्हें निरस्त किया जावे। यह निर्णित किया जावे कि उपरोक्त तीनों कर्मचारी पिछले समस्त वेतन एवं परिणामिक हितलाभ के साथ सेवा में पुनः स्थापित किए जाने के अधिकारी हैं । अन्य उचित सहायता भी दिलाए जाने का अनुरोध प्रथम पक्ष की ओर से किया गया है।

3. प्रथम पक्ष की ओर से प्रस्तुत स्वत्व के कथन का उत्तर द्वितीय पक्ष नियोक्ता की ओर से प्रस्तुत किया गया है। नियोक्ता द्वारा प्रकरण से संबंधित कर्मचारीगण के नाम लिखे जाकर अभिवचन किया गया है जिससे कर्मचारीगण के नियोजन को स्वीकार किया गया है किन्तु उनके संतोषजनक रूप से कार्यरत होने के तथ्य को अस्वीकार किया जाकर अभिवचित किया गया है कि चारों ही कर्मचारियों का कार्य औसत दर्जे से नीचे का रहा है। कर्मचारीगण को जारी सेवा समाप्ति आदेश दि. 26-11-93 को नियोक्ता की ओर से वैध एवं उचित होना बताया गया है। क्योंकि उन्हें जारी सेवा समाप्ति आदेश में उल्लेखित गंभीर दुराचरण उनके द्वारा किए गए थे। यह भी उल्लेख किया गया है कि प्रबंधन एवं कर्मचारियों के मध्य संबंध पिछले सात वर्षों से अत्यधिक सौजन्य पूर्ण रहे हैं। उनके मध्य किसी भी औद्योगिक विषय के संबंध में विवाद नहीं रहा है। यह अभिवचन किया गया है कि जनवरी 1991 में सीमेन्ट श्रमिक संगठन, राष्ट्रीय सीमेन्ट एवं खादान श्रमिक संगठन तथा कुछ श्रमिक प्रतिनिधियों द्वारा अतिरिक्त लाभ हेतु निवेदन किया गया जिसे प्रबंधन द्वारा मंजूर किया जाकर इस संबंध में उभय पक्ष के मध्य दिनांक 29-1-93 को समझौता किया गया जिनमें इस प्रकरण से संबंधित चारों कर्मचारी भी सम्मिलित थे। समझौते के द्वारा प्रबंधन ने कर्मचारियों को एक्सग्रेसिया लाभ अदा करने की सहमति इस शर्त पर दी कि कर्मचारी एवं श्रमिक संगठन औद्योगिक शांति बनाए रखकर आदर्श अनुशासन के साथ उत्पादन में प्रगतिशील बढ़ोत्तरी दिनांक 31-12-93 तक करेंगे। प्रथम पक्ष संगठन द्वारा कर्मचारियों को अनावश्यक भड़काया जाकर औद्योगिक अशांति पैदा करना प्रारंभ किया गया, क्योंकि प्रथम पक्ष संघ प्रबंधन एवं कर्मचारियों के मध्य सौजन्यपूर्ण संबंध एवं औद्योगिक शांति नहीं चाहते थे। इस कारण इनके द्वारा 20% बोनस की अवैध मांग उठाई गई। जिसमें बोनस भुगतान अधिनियम के तहत दी गई वेतन सीमा को हटाकर सभी कर्मचारियों को बोनस भुगतान करने की मांग की गई। इस विवाद को उप श्रमायुक्त (राज्य) बिलासपुर द्वारा संराधन की कार्यवाही में लिया गया। इस मांग में खान के कर्मचारियों का उल्लेख नहीं था। परिवर्तन का सूचना पत्र औद्योगिक विवाद अधिनियम की धारा 9-ए के तहत खान से संबंधित कर्मचारियों के लिए नहीं दिया जा सकता था। संराधन कार्यवाही की बैठक दिनांक 11-11-93 को रखी गई । जिसमें प्रबंधन द्वारा उनके समस्त नियमित कर्मचारियों को जो विधान की परिधि में आते हैं 20% बोनस भुगतान करने का प्रस्ताव किया गया, किन्तु संघ के श्री संबल चक्रवर्ती द्वारा औद्योगिक अशांति फैलाने के उद्देश्य में सफल होने की आशा के साथ उक्त प्रस्ताव को स्वीकार नहीं किया गया और इस कारण उनके द्वारा उप श्रमायुक्त के समक्ष ही उत्पात किया जाकर अवैध हड़ताल प्रारंभ करने की धमकी दी गई। संघ के अध्यक्ष के दुराशय को समझते हुए उप श्रमायुक्त द्वारा दिनांक 11-11-93 को संघ को निर्देशित किया गया कि वे कोई अवैध कार्यवाही न करें। किन्तु अपने स्वाभाविक आचरण के अनुकूल संघ द्वारा उप श्रमायुक्त के वैध आदेश की परवाह किए बिना तत्काल मीटिंग आयोजित की जाकर कर्मचारियों को अवैध हड़ताल करने के लिए उत्तेजित कर प्रेरित किया गया। अवैध हड़ताल दिनांक 11-11-93 की तीसरी पाली (10.00 पी.एम.) से प्लांट एवं खादान में प्रारंभ कर दी गई जिससे प्लांट एवं खादान का कार्य पूरी तरह पंगु कर दिया गया। जिससे न केवल द्वितीय पक्ष नियोक्ता को हानि उठानी पड़ी अपितु केन्द्रीय एवं राज्य सरकारों को भी क्षति हुई। द्वितीय पक्ष नियोक्ता की ओर से यह भी अभिवचन किया गया है कि कर्मचारियों द्वारा तत्काल हड़ताल प्रारंभ कर दी गई। इसके पूर्व न तो कोई सूचना-पत्र न मांग पत्र जारी किया गया और न ही औद्योगिक विवाद उठाया गया। हड़ताल खदान एवं प्लांट के कर्मचारियों द्वारा प्रारंभ की गई। प्लांट के कर्मचारी मध्य प्रदेश औद्योगिक संबंध अधिनियम तथा खादान के कर्मचारी औद्योगिक विवाद के अधिनियम से शासित हैं। औद्योगिक विवाद अधिनियम के लिए समुचित सरकार केन्द्र सरकार है और इस कारण खादान कर्मचारियों द्वारा संघ के भड़काने पर की गई हड़ताल प्रथम दृष्टि में ही अवैध है। उत्तेजित कर्मचारी उग्र एवं हिंसक हो गए। संघ के पदाधिकारियों के नेतृत्व में कर्मचारी फैक्ट्री व गेट के सामने भारी संख्या में दिनांक 11-11-93 को रात्रि 10 बजे एकत्रित हो गए। वे ऐसे प्रत्येक कर्मचारी या अधिकारी को जो काम करने के इच्छुक थे और फैक्ट्री के अंदर जाने का प्रयास करते थे, को मारने की धमकी दे रहे थे। प्रबंधन द्वारा विरोध को टालने के उद्देश्य से दूसरी पाली के कर्मचारियों को तीसरी पाली में रोकने का प्रयास किया गया तथा केन्टीन के ठेकेदार को उनके लिए खाना तैयार करने के निर्देश दिए गए। उग्र कर्मचारी जो फैक्ट्री के बाहर थे इतने हिंसक हो गए थे कि वे चाहते थे कि फैक्ट्री के अंदर के कर्मचारी भी भूखे रहे उनके द्वारा केन्टीन को लूट लिया गया था श्री जी.डी. अग्रवाल के साथ मारपीट की जाकर उसे इतना भयभीत किया गया जिससे वह केन्टीन छोड़कर अपनी जान बचाने के लिए भाग जाने के लिए मजबूर हो गया। खादान कर्मचारियों ने भी इस अवैध रूप से एकत्रित होकर की गई अवैध गतिविधियों में साथ दिया। दिनांक 12-11-93 को संघ के पदाधिकारियों के नेतृत्व में कर्मचारियों ने जो माइन एवं प्लांट के थे फैक्ट्री गेट के पास सुबह से ही इकट्ठा होकर नारे बाजी प्रारंभ की गई तथा प्रबंधन अधिकारियों एवं इच्छुक कर्मचारियों को धमकियां दी गई। ये कर्मचारी किसी भी व्यक्ति को सुबह "6" बजे से प्रारंभ पहली पाली में कारखाने के अंदर नहीं जाने दे रहे थे। इसी दिन सुबह लगभग 8 बजे कार्यकारी निर्देशक श्री ए.डी. खत्री कंपनी के अन्य अधिकारियों एवं स्टाफ के साथ कारखाने आए किन्तु इन सब कर्मचारियों ने उन्हें कारखाने के गेट से लगभग 50 मीटर पहले ही रोक दिया। अधिकारियों को कर्मचारियों ने गालियां देना एवं उन पर हमला करना शुरू कर दिया। इन अवैध गतिविधियों एवं हमले में प्रकरण से संबंधित कर्मचारी भी शामिल थे। श्री ए.डी. खत्री पर हमला किया गया उन्हें चोटें आईं। उन्हें एक कर्मचारी की साईकिल पर धक्का देकर गिरा दिया गया। इन सभी को उग्र भीड़ द्वारा धक्का देकर कालोनी की तरफ जाने के लिए मजबूर कर दिया गया। थोड़ी देर बाद लगभग 8.30 बजे श्री एन.एस. राव वर्क्स डायरेक्टर, श्री ए. के. उत्तम सीनियर मैनेजर (क्यू.सी.) तथा अन्य अधिकारियों ने श्री जे. सी. यादव सुरक्षा गार्ड के पहरे में कारखाने जाने का प्रयास किया गया किन्तु उन पर भी बुरी तरह हमला किया गया जिन्हें बाद में अस्पताल भेजा गया। इसके बाद प्लांट एवं खादान के कर्मचारियों ने कंपनी से लगी हुई पूरी आवासीय

कालोनी में घूमकर जोर-जोर से नारेबाजी की तथा कारखाने एवं खादान में जाने की हिम्मत करने वाले प्रत्येक व्यक्ति को घायल करने की धमकियां दीं। दिनांक 13-11-93 को श्रम न्यायालय बिलासपुर ने संघ एवं कर्मचारियों को अवैध हड़ताल चालू न रखने एवं अपने कार्य पर तत्काल उपस्थित रहने को निर्देश देने के अंतरिम आदेश पारित किया। न्यायालय ने संघ के पदाधिकारियों को भी निर्देशित किया गया कि वे कर्मचारियों को हड़ताल के लिए प्रेरित न करें। तथा उन्हें ड्यूटी पर जाने के लिए कहें। किन्तु संघ तथा कर्मचारियों ने आदेश की परवाह किए बिना अपनी हड़ताल एवं उग्र गतिविधियां जारी रखीं। दिनांक 13-11-93 दीवाली का दिन था। कर्मचारियों ने आवासीय कालोनी के निवासियों को इतना आतंकित किया कि महिलायें बाजार में खरीदारी करने एवं पूजा करने तक के लिए नहीं निकल सकीं। इसी दिन उपरोक्त कर्मचारियों ने जो खादान के कर्मचारी थे, और खादान एवं प्लांट के कर्मचारियों को अवैध हड़ताल में शामिल थे। श्री एम.एम. शमी जो कर्मशाला जा रहे थे को पकड़ लिया और उन पर हमला कर उन्हें बुरी तरह चोटग्रस्त कर दिया जिससे वे अस्पताल में भर्ती रहे। उपरोक्त सभी कृत्य गंभीर दुराचरण की परिधि में आते हैं। तथा खादान में प्रभावशील प्रमाणित स्तरीय आज्ञाओं के क्लाज 7 के तहत गंभीर दुराचरण है। कर्मचारियों द्वारा आवासीय कालोनी की महिलाओं को भी उत्पीड़ित किया गया। इस संबंध में महिलाओं तथा महिला क्लब द्वारा शिकायत भी प्राप्त हुई । इसी दिन उपरोक्त कर्मचारियों के साथ श्री गुहा सिंह ने चालक अरविंद साध को कंपनी अतिथि गृह के सामने मारा तथा उसके परिवार के सदस्यों को मारने की धमकी दी। यहां एक स्वतंत्र इकाई "डेरी" एवं "इआरसी" के नाम से है जिसमें लगभग 450 उच्च नस्ल के जानवर 150 गायों समेत हैं। गायें लगभग 30 लीटर दूध देने वाली हैं। उपरोक्त नामांकित व्यक्तियों के साथ कर्मचारियों ने इस केन्द्र के कर्मचारियों को भी धमकाया और उन्हें भी हड़ताल पर जाने के लिए बाध्य किया। परिणामस्वरूप जानवरों की देखभाल नहीं की जा सकी जिससे उनमें रोग फैलने लगा। एक गाय जिसका दूध नहीं निकाला जा सका दिनांक 13-11-93 को मर गई। डेरी में यह स्थिति दिनांक 17-11-93 तक जारी रही। बावजूद इसके कि जिला अधिकारियों द्वारा बारबार निषेधात्मक सलाह ऐसा न करने के लिए दी गई। अंत में उपर लिखे व्यक्तियों सहित हिंसक कर्मचारियों ने स्थानीय अधिकारियों को यह आश्वासन दिया कि डेरी का कार्य 18-11-93 से प्रभावित नहीं होगा। इसके बावजूद भी एक ट्रक जो पशु आहार ला रहा था को व्यवधान पैदा कर वापस कर दिया गया तथा डेरी के कार्य निष्पादन में व्यवधान उत्पन्न करना जारी रखा गया। स्वत्व के कथन के उत्तर में उपर लिखे व्यक्तियों तथा अन्य हड़ताली व्यक्तियों के इस त्रासपूर्ण कृत्य को देखते हुए व्यवहार न्यायाधीश जांजगीर द्वारा दिनांक 16-11-93 को निषेधात्मक आदेश पारित किया जाकर कर्मचारियों एवं संघ के प्रतिनिधियों को प्लांट, खदानों, कालोनी एवं डेरी से 500 मीटर की परिधि में एकत्रित होने तथा प्रत्यक्ष तथा अप्रत्यक्ष रूप से अवैध गतिविधियां संचालित करने से निषिद्ध किया गया। इस सभी आदेशों को व्यापक रूप से प्रसारित एवं प्रकाशित किया गया किन्तु संघ एवं कर्मचारी इन वैध आदेशों का उल्लंघन करते हुए हिंसा व त्रास फैलाते रहे। समस्त गोपाल नगर का वातावरण त्रास एवं भयपूर्ण हो गया था। तमाम अधिकारी एवं कर्मचारियों द्वारा लंबी छुट्टी पर जाने तथा त्याग-पत्र देने की इच्छा व्यक्त की गई। प्रतिदिन शिकायतें की जाती रहीं जिला अधिकारियों द्वारा पुलिस व्यवस्था की गई थी किन्तु यह हड़ताली कर्मचारियों को शांत करने में प्रभावी नहीं हो सकी। अपितु उनकी उग्रता बढ़ती रही। दिनांक 18-11-93 को राष्ट्रीय सीमेन्ट एवं खादान श्रमिक संगठन (इंटक) द्वारा पत्र से सूचित किया गया कि उनके कर्मचारी कार्य पर जाने के लिए तैयार हैं। किन्तु हड़ताली संघ एवं उसके सदस्यों द्वारा निर्मित भय एवं त्रास के वातावरण में वे कार्य पर जाने में असमर्थ हैं। क्योंकि लगभग दो-तीन हजार व्यक्ति कारखाने के मुख्य द्वार पर लाठियों एवं सरियों से लैस होकर घूम रहे हैं। उनके द्वारा यह भी सूचित किया गया है कि उनके सदस्यगण यदि कार्य पर जाने का प्रयास करते हैं तो अप्रिय घटना घट सकती है और इससे वे स्वयं को असुरक्षित महसूस करते हैं। उपरोक्त सभी कृत्य जो उपर लिखे व्यक्तियों द्वारा किए गए स्तरीय स्थाई आज्ञाओं के अंतर्गत गंभीर दुराचरण है किन्तु व्यक्ति इतने आतंकित थे कि इन कर्मचारियों के विरुद्ध विभागीय जांच करना व्यवहारिक रूप से संभव नहीं था। इन परिस्थितियों में प्रबंधन के पास कर्मचारियों को बिना विभागीय जांच किए उपरोक्त दुराचरण के लिए बरखास्त किये जाने के अलावा विकल्प शेष नहीं था जिससे दूसरे व्यक्तियों को कानून अपने हाथ में लेने से रोका जा सके एवं औद्योगिक शांति एवं अनुशासन की स्थिति बहाल की जा सके। नियोक्ता ने कर्मचारियों के विरुद्ध न्यायालय के समक्ष दुराचरण प्रमाणित करने की अनुमति चाही है। कर्मचारियों की बरखास्तगी से भी उन्हें अवैध कार्यवाही जारी रखने से रोका नहीं जा सका। प्रबंधन को कर्मचारियों पर उनके उक्त कृत्यों से विश्वास समाप्त हो गया है। दिनांक 1-4-94 को स्थानीय अधिकारियों संघ प्रतिनिधियों एवं प्रबंधन प्रतिनिधियों के मध्य बैठक रखी गई जिसमें तय किया गया कि विवाद विवाचक को प्रेषित कर दिया जाए तथा बरखास्त व्यक्तियों को मानवीय आधार पर उनके अस्तित्व के लिए उनके वेतन का 50% भुगतान किया जाता है। यह भी तय किया गया कि ये व्यक्ति शांति एवं अच्छे व्यवहार के लिए वचन दें। यह सहमति दिनांक 9-2-94 को उप श्रमायुक्त इन्दौर, उप श्रमायुक्त बिलासपुर, संघ एवं प्रबंधन की बैठक में की गई। किन्तु इस शर्त का कर्मचारियों द्वारा उल्लंघन किया गया। जिसके लिए पुलिस में शिकायत की गई तथा भत्ता रोकने की कार्यवाही भी की जा रही है। यह भी अभिवचन किया गया है कि इन कर्मचारियों के गुमराह किए जाने से कर्मचारी इतने बहक गये थे कि वे स्थानीय अधिकारियों एवं श्रम विभाग के अधिकारियों की सलाह सुनने तक के लिए तैयार नहीं थे। कुछ लोगों को सद्बुद्धि आने पर उनके द्वारा चेयरमैन से संपर्क किया गया व निवेदन किया गया कि उन्हें माफ किया जाकर समस्या का निदान किया जाए। चेयरमेन ने उनके निवेदन के आधार पर अपने मत से कार्यकारी निदेशक के मार्फत अवगत कराया तथा प्रत्येक व्यक्ति से उनके द्वारा दिए गए सुझावों को सहमति का वचन लेने के लिए कहा गया और इसके बाद ही उक्त बैठक जिलाध्यक्ष के समक्ष आयोजित की गई। कर्मचारियों द्वारा हिंसा, अवैध हड़ताल तथा आंतक का वातावरण दिनांक 25-12-93 तक जारी रखा गया जिससे अधिकारियों को क्षेत्र में दंड प्रक्रिया संहिता की धारा 144 लागू करने के आदेश देने के लिए मजबूर होना पड़ा। इन आदेशों का भी उल्लंघन कर्मचारियों द्वारा किया गया। जिसके लिए पुलिस ने उन्हें हिरासत में लिया। इन कर्मचारियों के हिरासत में लिए जाने के बाद कर्मचारियों ने कार्य पर जाना प्रारंभ किया। काफी संख्या में कर्मचारियों ने चेयरमेन से लिखित में क्षमायाचना की और निवेदन किया कि उन्हें क्षमा किया जाए और उनके द्वारा किए गए कृत्यों के लिए गंभीर रूप से दंडित न किया जाए। उनकी काफी संख्या को देखते हुए तथा उनके पश्चाताप के भाव को देखते हुए चेयरमेन द्वारा कर्मचारियों को कुछ रियायत दी गई। प्रत्येक कर्मचारी ने

वचन पत्र इस आशय का निष्पादित किया कि वे अनुशासित रहकर शांतिपूर्वक कार्य करते हुए उत्पादन को बढ़ाएंगे। बरखास्त कर्मचारी दिनांक 25-12-93 को कार्य प्रारंभ होने के बाद भी शांत नहीं रहे। इनके द्वारा सुनियोजित तरीके से दिनांक 26-1-94 को ग्रामीणों एवं सहयोगियों के साथ मिलकर मारपीट एवं दंगेफसाद के कार्य किए गए। इनके द्वारा न केवल सुरक्षा कर्मियों एवं अन्य स्टाफ सदस्यों को घायल किया गया, बल्कि कंपनी के स्वामित्व की इमारतों (नीलकंठ होटल) व आवासीय भवन तथा कालोनी के प्रवेश द्वार को क्षतिग्रस्त किया गया। इनके द्वारा कारखाने के मुख्य द्वार को भी तोड़ने का प्रयास किया गया। जिसका उद्देश्य मशीनों एवं अंदर कार्यरत कर्मचारियों को नुकसान पहुंचाना था। यद्यपि पुलिस एवं स्वयं सुरक्षा कर्मियों की मदद से इस प्रयास को विफल कर दिया गया। कर्मचारियों द्वारा पुलिस कर्मियों पर भी हमला किया गया तथा नीलकंठ होटल में लूट की गई। नीलकंठ होटल कंपनी परिसर में ही संचालित है। दिनांक 27-1-94 को पुलिस द्वारा विभिन्न अपराधों के लिए लगभग 65 व्यक्तियों को हिरासत में लिया गया। जिनसे विस्फोटक पदार्थ बम तथा घातक हथियार भी संघ कार्यालय से बरामद किये गए। श्री हरिहर सिंह तथा बाल्मीकी चन्द्राकर विभिन्न अपराधों में अभी भी जेल में हैं। जिनके जमानत आवेदन भी सत्र न्यायालय से अस्वीकार किए जा चुके हैं। इन पर भारतीय दंड विधान धारा 88 के तहत रु. 200/- प्रत्येक का अर्थ दंड भी किया गया। यह आदेश दंडाधिकारी वर्ग 2 जांजगीर द्वारा आपराधिक प्रकरण क्रमांक 793/94 में दिनांक 19-11-95 को पारित किया गया। बरखास्त शुदा कर्मचारियों की बरखास्तगी के बाद कर्मचारी प्रसन्न हैं तथा शांति पूर्वक कार्य संपादित कर रहे हैं। कर्मचारियों की बरखास्तगी नियोक्ता, कर्मचारियों, ग्रामीणों, स्थानीय अधिकारियों, उद्योग तथा स्थानीय क्षेत्र को आतंक से मुक्त कराने के लिए आवश्यक थी। यदि इन्हें किसी भी आधार पर सेवा में पुनः स्थापित किए जाने की सहायता दिलाई जाती है तो ऊपर लिखी परिस्थितियां पुनः पैदा होने का भय है। इन कर्मचारियों को भारतीय मानक के आधार पर बेहतर सेवा शर्तें एवं लाभ दिए जा रहे हैं। फिर भी उक्त हिंसक परिस्थितियां निर्मित की गईं। संघ एवं कर्मचारियों द्वारा बिना किसी न्यायोचित कारण के अनियंत्रित होकर प्लांट एवं व्यक्तियों को आर्थिक क्षति पहुंचाई गई है। नियोक्ता की ओर से स्वत्व के कथन में प्रथम पक्ष द्वारा किए गए शेष अभिवचनों को अस्वीकार किया जाकर बताया गया है कि संबंधित कर्मचारी लाभप्रद नियोजन में हैं और वे किसी भी सहायता के अधिकारी नहीं हैं अनुरोध किया गया है कि उक्त तथ्यों के प्रकाश में कर्मचारीगण की बरखास्तगी को पूरी तरह वैध एवं न्यायोचित घोषित किया जावे। कर्मचारीगण किसी भी सहायता के अधिकारी नहीं हैं।

4. उभय पक्ष के अभिवचनों के आधार पर मेरे द्वारा निम्नलिखित वाद प्रश्न निर्मित किए गए :—

(1) क्या श्री बाल्मीकी चन्द्राकर महेश कुमार सिंह, हरिहर सिंह और लालेश्वर तिवारी खनिकों को दिनांक 26-12-93 से नौकरी से बरखास्त किए जाने की कार्यवाही वैध एवं उचित है ?

(2) क्या विवाद से संबंधित चारों खनिक कर्मचारी आरोपी दुराचरण के दोषी हैं ?

(3) सहायता एवं व्यय।

नियोक्ता की ओर से कर्मचारीगण के विरुद्ध दुराचरण प्रमाणित करने हेतु साक्षी सर्व श्री ए. के.उत्तम, एन.एस.राव, एम.ए. शमी, जे.सी. यादव, पी. व्ही.पंकज, एस.के. सिंह, एवं श्री अर्जुन दास खत्री के कथन लिपिबद्ध कराये गये तथा प्रदर्श डी 1 लगायत डी-146 तक के दस्तावेज प्रदर्शित किए गए हैं। जबकि प्रथम पक्ष की ओर से साक्षी सर्व श्री राधेश्याम कश्यप, श्री रवीन्द्र साव, भव मोचन चतुर्वेदी, लालेश्वर तिवारी, गुहा सिंह, बाल्मीकी चन्द्राकर, लक्ष्मी गिरी गोस्वामी, महेश कुमार सिंह, उमाशंकर गिरी व हरिहर सिंह के कथन लिपिबद्ध कराए हैं तथा आर्टिकल। अभिलेख पर लाया गया है।

5. मेरे द्वारा उभय पक्ष की ओर से प्रस्तुत तर्क श्रवण किए गए। प्रस्तुत साक्ष्य, दस्तावेजों एवं न्याय दृष्टान्तों पर विचार किया गया। निर्मित वाद प्रश्नों पर मेरे निष्कर्ष कारणों सहित निम्नानुसार हैं :—

6. वाद प्रश्न क्रमांक 1 व 2 :—

नियोक्ता की ओर से विद्वान अधिवक्ता श्री एच. एन. व्यास का तर्क है कि विवाद से संबंधित चारों कर्मचारियों को प्रदर्श डी-93 लगायत डी-96 सेवा समाप्ति आदेश दिनांकित 26-11-93 पृथक-पृथक जारी किए गए हैं जिनमें इस बात का स्पष्ट उल्लेख है कि उनके द्वारा किए गए दुराचरण क्या थे और इन गंभीर दुराचरण के लिए विभागीय जांच करना क्यों संभव नहीं था। कर्मचारियों की ओर से स्वत्व के कथन में उन पर आरोपित दुराचरण से इंकार किया जाकर साक्ष्य में कर्मचारियों ने स्वयं की घटना दिनांक को घटनास्थल पर उपस्थित न होना बताया है। श्री व्यास के अनुसार प्रकरण के निराकरण के लिए विचार योग्य प्रश्न यह है कि क्या कर्मचारीगण को बिना जांच के सेवा से पृथक किया जा सकता था ? क्या परिस्थितियां ऐसी थीं कि कर्मचारी के विरुद्ध जांच संपादित की जाना व्यवहारित रूप से संभव नहीं था ? कर्मचारीगण को बरखास्त करने की कार्यवाही उनके द्वारा किए गए दुराचरण के प्रकाश में वैध एवं उचित है ? और यदि हां तो कब से ? यह प्रश्न भी विचारणीय है कि इस प्रकार के दुराचरण के प्रकरणों में प्रमाणिकता की साक्ष्य का स्तर क्या होना चाहिए ? तथा प्रकरण की परिस्थितियों में कर्मचारीगण द्वारा घटनास्थल पर उपस्थित न रहने की साक्ष्य एवं बचाव स्वीकार किए जाने योग्य है क्या ? श्री व्यास ने तर्क प्रस्तुत करते हुए बताया है कि विशेष परिस्थितियों में जब आरोपित कर्मचारी द्वारा निर्मित वातावरण ऐसा हो जावे कि जांच करना व्यवहारिक रूप से संभव न हो तब कर्मचारी को बिना जांच किए भी गंभीर दुराचरण के लिए सेवा से पृथक किया जा सकता है। अपने इन तर्कों के समर्थन में श्री व्यास ने न्याय दृष्टान्त ए आई आर 1965 सुप्रीम कोर्ट 1803, ए आई आर 1973 सुप्रीम कोर्ट 1227, 1983 लैब आई सी पृष्ठ 303, (इलाहाबाद उच्च न्यायालय), 1989 लैब आई सी पृष्ठ 1023 (म.प्र. उच्च न्यायालय), 1988 लैब आई सी पृष्ठ 1528 (इलाहाबाद हाई कोर्ट), 1997 एस.सी.सी. पृष्ठ 826 तथा ए आई आर 1985 सुप्रीम कोर्ट 1416 में प्रतिपादित न्याय सिद्धान्तों का उल्लेख किया है। श्री व्यास ने द्वितीय पक्ष साक्षियों द्वारा दिए गए न्यायालयीन कथन का उल्लेख करते हुए बताया है कि कर्मचारीगण द्वारा आतंक का ऐसा वातावरण निर्मित कर दिया गया था कि उन्हें आरोप पत्र दिए जाकर विभागीय जांच करना संभव नहीं था। श्री व्यास ने व्यक्त किया कि द्वितीय पक्ष नियोक्ता के साक्षी क्र. 6 श्री एस. के. सिंह ने अपने न्यायालयीन कथन में बताया है कि हड़तालियों की गतिविधियों से द्वितीय पक्ष संस्थान के प्लांट उत्खनन क्षेत्र

एवं कालोनी में बड़ा ही आतंक एवं दहशत का वातावरण पैदा हो गया था। लोग अपने-अपने घरों में बंद हो गये थे। क्योंकि 25-25 की टोलियों में कर्मचारी लाठी, डंडा लेकर सभी घर निगरानी रखे हुए थे। इस समस्त वातावरण का नेतृत्व श्री उमाशंकर गिरी, लालेश्वर तिवारी, हरिहर सिंह, बाल्मीकी चन्द्राकर, संबल चक्रवर्ती, सुशांत कुमार, महेश सिंह, लक्ष्मण गिरी गोस्वामी, गुहा सिंह व भयमोचन चतुर्वेदी इत्यादी द्वारा किया जा रहा था। कर्मचारियों को आरोप पत्र दिया जाना संभव नहीं था। क्योंकि वातावरण आतंकपूर्ण था। नियोक्ता के साक्षी क्र. 7 श्री अर्जुन दास खत्री ने भी अपने न्यायालयीन कथन में उल्लेख किया है कि कर्मचारियों को हड़ताल के लिए प्रेरित करने एवं अधिकारियों पर आक्रमण करने जैसा गंभीर दुराचरण के लिए विवाद में संबंधित कर्मचारियों को सेवा से पृथक किया गया है। सेवा समाप्ति आदेश में उनके द्वारा किया गया दुराचरण उल्लेखित है। इन कर्मचारियों को सेवा से पृथक करने से पूर्व विभागीय जांच नहीं की गई क्योंकि वातावरण इतना दहशतपूर्ण था कि कोई भी जांच संभव नहीं थी। श्री व्यास ने उपरोक्त महत्वपूर्ण साक्षियों के कथन का उल्लेख करते हुए बताया है कि श्री सिंह व श्री खत्री क्रमशः सीनियर मैनेजर (पर्सनल) तथा कार्यपालन निर्देशक के पद पर पदस्थ थे। इस प्रकार द्वितीय पक्ष की ओर से न्यायालय ने दस्तावेजी साक्ष्य के आधार पर यह प्रमाणित किया है कि कर्मचारीगण के विरुद्ध जांच की जाना कतई संभव नहीं था। उल्लेखित न्याय दृष्टान्तों में प्रतिपादित न्यायसिद्धान्तों के प्रकाश में नियोक्ता द्वारा कर्मचारीगण को बरखास्त करने की कार्यवाही न्यायोचित है। श्री व्यास का यह भी तर्क है कि यदि कर्मचारीगण को बरखास्त करने की कार्यवाही उनके कारण किए गए गंभीर दुराचरण के प्रकाश में न्यायोचित है तो उन्हें उनकी बरखास्तगी दिनांक से ही बरखास्त किया जाना माना जावेगा। श्री व्यास ने अपने उक्त तर्क के समर्थन में न्याय दृष्टांत 1990 एल एल आर (केरला उच्च न्यायालय) पृष्ठ 629, 1996 एल एल आर (सुप्रीम कोर्ट) पृष्ठ 1129 तथा 1996 एल एल आर पृष्ठ 232 (हिमाचल प्रदेश उच्च न्यायालय) में प्रतिपादित न्याय सिद्धान्तों का उल्लेख किया है। श्री व्यास ने 1996 एम पी एल एस आर पृष्ठ 546 एवं 551 में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित न्याय सिद्धान्तों का उल्लेख करते हुए बताया है कि सेवा समाप्ति आदेश उसी दिन से प्रभावी होगा जब नियोक्ता द्वारा उसे जारी किया गया है। श्री व्यास ने श्रम विधियों के तहत दुराचरण की प्रमाणिकता के संबंध में प्रमाण के स्तर बाबत तर्क प्रस्तुत करते हुए बताया है कि इनमें शंका से परे दुराचरण प्रमाणित होना आवश्यक नहीं है। संभावनाओं के नजदीक की परिस्थितियों के आधार पर अनुमान भी दुराचरण की प्रमाणिकता के लिए पर्याप्त है। श्री व्यास ने इस संबंध में 1997 एल.एल.आर. पृष्ठ 649 में माननीय बाम्बे उच्च न्यायालय में प्रतिपादित न्याय सिद्धांतों का उल्लेख करते हुए तर्क प्रस्तुत किया है कि आपराधिक प्रकरणों में अभियुक्त के विरुद्ध अपराध की प्रमाणिकता का स्तर इस न्यायालय के समक्ष विचाराधीन प्रकरण में लागू किए जाने योग्य नहीं है क्योंकि यहां न्यायालय को यह देखना है कि नियोक्ता और कर्मचारी के मध्य नियोजन का करार बताई गई परिस्थितियों में बहाल रखा जा सकता है या नहीं। प्रस्तुत प्रकरण में नियोक्ता द्वारा ऐसी परिस्थितियां प्रमाणित की गई हैं जिनके आधार पर कर्मचारीगण सेवा में रखे जाने योग्य नहीं हैं। श्री व्यास ने कर्मचारीगण की ओर से लिए गए इस बचाव के संबंध में कि वे घटना दिनांक व स्थान पर घटना के समय उपस्थित नहीं थे, तर्क प्रस्तुत किया है कि यह बचाव पूरी तरह पश्चात विचार पर आधारित है क्योंकि इसके संबंध में कोई भी उल्लेख स्वत्व के कथन में नहीं किया गया है। कर्मचारीगण ने अपने कथन के दौरान यह बचाव लिया है जो स्वीकार किए जाने योग्य नहीं है। इस संबंध में श्री व्यास ने ए.आई.आर. 1955 एन.यू.सी. 1807 (बाल्यूम 42) में तथा ए.आई.आर. 1981 सुप्रीम कोर्ट पृष्ठ 911 में प्रतिपादित न्याय सिद्धान्त का उल्लेख करते हुए व्यक्त किया है कि अन्यत्र उपस्थित होने का अभिवाक् तभी स्वीकार किए जाने योग्य है जब संबंधित व्यक्ति का घटना स्थल पर पहुंच सकना संभव ही न हो। जैसे कि संबंधित व्यक्ति इतनी दूर हो कि उसका संबंधित समय में घटना स्थल पर पहुंचना स्वाभाविक तौर पर संभव नहीं हो। प्रस्तुत प्रकरण में ऐसी परिस्थितियां नहीं प्रमाणित की गई हैं जिससे कर्मचारीगण की ओर से किया गया अन्यत्र उपस्थित रहने का अभिवाक् स्वीकार किया जा सके।

7. श्री व्यास ने प्रस्तुत साक्ष्य के आधार पर तर्क प्रस्तुत किया है कि नियोक्ता के साक्षी क्र. 1 श्री उत्तम ने प्रदर्श डी-1 को प्रमाणित किया है। प्रदर्श डी-1 की शिकायत साक्षी द्वारा की गई थी। साक्षी ने इस शिकायती पत्र में संपूर्ण परिस्थितियों का उल्लेख करते हुए उसके साथ कारखाने के मुख्य द्वार की ओर दिनांक 11-11-93 को गए एक्जीक्यूटिव डायरेक्टर एवं श्री राव के साथ की गई मारपीट का उल्लेख किया है। साक्षी ने यह भी बताया है कि श्री राव के ऊपर लाठी का प्रहार किया गया दूर से पत्थर फैंके गए। रोड से भी उन्हें मारा गया वे नीचे गिरे उन्हें बचाने के लिए जब साक्षी आगे बढ़ा तो उसे भी धक्के से नीचे गिरा दिया गया। साक्षी ने मारपीट करने वालों में स्पष्ट रूप से विवाद से संबंधित कर्मचारियों के नाम का उल्लेख किया है। नियोक्ता के दूसरे साक्षी श्री राव ने भी उनके साथ की गई मारपीट तथा श्री खत्री जी को धक्का देकर साइकल पर गिराने संबंधी घटना का उल्लेख करते हुए प्रदर्श डी-2 की रिपोर्ट को प्रमाणित किया है। मैनेजमेंट को की गई शिकायत प्रदर्श डी-3 व संबंधित नोट डी-4 को भी साक्षी ने प्रमाणित किया है। क्रॉस परीक्षण में ऐसा कुछ भी नहीं आया है कि जिससे साक्षियों द्वारा दिए गए कथन पर अविश्वास किया जा सके। नियोक्ता के तीसरे साक्षी श्री एम.ए. शमी ने प्रदर्श डी-5 लगायत डी-11 के दस्तावेज प्रमाणित करते हुए बताया कि दिनांक 13-11-93 को जब वह अन्य अधिकारियों के साथ जीप में बैठकर कालोनी गेट पर आया और दो गार्डों के साथ जीप में बैठकर फैक्ट्री की ओर श्री लखोटिया और श्री चौधरी साहब के साथ गया तो वहां उसकी जीप को रोक लिया गया उसे जीप के पर्दे के पीछे रोड से हिट किया गया और उसे जीप से खींचकर नीचे पटक कर मारपीट की गई। मारपीट करने वालों में साक्षी ने संबंधित कर्मचारियों के नाम महेश कुमार सिंह, बाल्मीकी के नाम लिए हैं। कर्मचारी ने उसका उपचार किए जाने और पुलिस में रिपोर्ट करने संबंधी दस्तावेज भी प्रमाणित किए हैं और बताया है कि वह चार दिन अस्पताल में भर्ती रहा। बाद में उसे राजनांदगांव के मुनाइटेड अस्पताल में भी भर्ती रहना पड़ा। इसी प्रकार नियोक्ता के साक्षी श्री जे.सी. यादव ने भी दिनांक 12-11-93 को कर्मचारियों द्वारा मारपीट करने की घटना के बारे में बताया है। उसने यह भी बताया है कि जब वह श्री उत्तम को उठाने बढ़ा तो उस पर भी पीछे से वार किए गए। जिससे उसके सिर से खून निकला उसने डिस्पेन्सरी में इलाज करना भी बताया है तथा प्रदर्श डी-12 की रिपोर्ट तथा प्रदर्श डी-13 के चिकित्सा परीक्षण संबंधी दस्तावेज प्रमाणित किया है। नियोक्ता के पांचवें साक्षी श्री व्ही. पी. पंकज ने गुहा सिंह द्वारा अरविन्द साहू नाम के वाहन चालक के साथ गेस्ट हाउस के पीछे मारपीट करना बताया है। इस साक्षी ने प्रदर्श डी-14 की शिकायत

उक्त के संबंध में करना बताया है। नियोक्ता के साक्षी श्री एस.के. सिंह (साक्षी क्र. 6) ने प्रदर्श डी-15 लगायत डी-99 के दस्तावेजों को प्रमाणित करते हुए कर्मचारीगण द्वारा किए गए गंभीर दुराचरण प्रमाणित किए हैं। द्वितीय पक्ष साक्षी क्र. 7 श्री अर्जुन दास खत्री ने भी उनके साथ की गई मारपीट का उल्लेख करते हुए बताया है कि प्रबंधन एवं यूनियन प्रदर्श डी-15 का समझौता दिनांक 29-1-93 को संपन्न हुआ था। उक्त समझौता, समझौते की कंडिका 3, 4 व 5 में उल्लेखित सहमति की शर्त पर किया गया था। समझौते अनुसार कर्मचारियों को एक्सग्रेशिया भुगतान भी कर दिया गया था। फिर भी प्रदर्श डी-24 की अवैध मांग यूनियन की ओर से की गई। जिसके संबंध में दिनांक 11-11-93 को संराधन कार्यवाही हेतु तिथि नियत की गई। इस कार्यवाही की आदेशिका प्रदर्श डी-26 होना साक्षी ने बताया है। प्रदर्श डी-28 का आदेश संघ को अवैध कार्यवाही न करने बाबत दिया जाना भी साक्षी ने बताया है। इस साक्षी ने संबंधित कर्मचारियों के नाम का उल्लेख करते हुए उनके द्वारा आरोपित दुराचरण करना प्रमाणित किया है। साक्षी ने इनके द्वारा निर्मित पूरे माहौल को शमशान जैसा होना बताया है। जो कर्मचारियों की हिंसक एवं उग्र गतिविधियों को चरम सीमा को दर्शाता है। इस साक्षी ने बताया है कि कर्मचारियों द्वारा अपनी गलतियों के लिए माफीनामें दिए जो चेयरमैन को संबोधित और इन पर काम पर वापस लेने का अनुरोध किया गया था। साक्षी ने बताया कि चेयरमैन द्वारा उसे निर्देशित किया गया कि उसे यदि कर्मचारी अपने कृत्य के लिए माफीनामा लिखकर देते हैं तथा भविष्य में दुराचरण न करने हेतु आश्वस्त करते हैं एवं बिना शर्त काम पर वापस आना चाहते हैं तो उन्हें काम पर वापस लिया जावे। प्रदर्श डी-101 लगायत 138 तक के पत्र भी साक्षी ने प्रमाणित किए हैं। उसने बताया है कि चेयरमैन की ओर से कर्मचारियों को दिये जाने वाला पत्र का प्रारुप डी-139 है। जिसका सहमति पत्र कर्मचारियों ने दिया था। श्री व्यास ने बताया कि प्रथम पक्ष साक्षी श्री राधेश्याम कश्यप द्वारा प्रदर्श डी-26 में अपने हस्ताक्षर स्वीकार किए हैं यह दस्तावेज दिनांक 11-11-93 को उप श्रमायुक्त के समक्ष संराधन कार्यवाही की आदेशिका है। किन्तु यह साक्षी प्रदर्श डी-28 के उप श्रमायुक्त के आदेश की जानकारी से जानबूझकर मुकरता है। डी-28 उप श्रमायुक्त का वह आदेश है जिसमें संघ को समझाइश दी गई है कि वे ऐसा कोई कार्य न करें जिससे औद्योगिक अशांति उत्पन्न हो एवं राष्ट्रीय उत्पादन में क्षति हो। यह पत्र उप श्रमायुक्त द्वारा अध्यक्ष सीमेंट श्रमिक संगठन बिलासपुर को संबोधित है। श्री व्यास ने इस साक्षी के क्रूट परीक्षण में की गई इस स्वीकारोक्ति को भी उल्लेखित किया है कि उसने संबंधित कर्मचारियों के बरखास्तगी आदेश पढ़े हैं उन्हें जारी आदेशों में लिखे आरोपों से साक्षी ने स्वयं को जुड़ा हुआ न होना बताया है। उसने यह भी कहा है कि यदि मैं इन आरोपों से जुड़ा होता तो मुझे भी निकाल देते। इस प्रकार इस साक्षी ने जो संघ का कार्यकारी अध्यक्ष था कर्मचारियों पर आरोपित दुराचरण उनके द्वारा किया जाना मंजूर किए हैं। इसी प्रकार प्रथम पक्ष साक्षी क्र. 3 श्री चतुर्वेदी ने अपने मुख्य परीक्षण में वर्ष 1993 के बारे में कुछ भी न कहते हुए सन् 1992 के बारे में बताया है और यह वर्ष उसके द्वारा अपने कथन में कई बार (8 बार) बताया गया है। श्री व्यास ने अन्य कर्मचारियों के कथन का उल्लेख करते हुए तर्क प्रस्तुत किया है कि सभी ने घटना के समय उपस्थित न होने का बचाव लिया है जो स्वीकार किए जाने योग्य नहीं है। द्वितीय पक्ष नियोजिता की ओर से कर्मचारीगण के विरुद्ध आरोपित गंभीर दुराचरण प्रमाणित किए हैं। दिनांक 11-11-93 से 25-12-93 तक कर्मचारीगण द्वारा अवैध हड़ताल की जाकर आतंकपूर्ण माहौल निर्मित करने का दुराचरण भी प्रमाणित हुआ है। प्रस्तुत साक्ष्य के प्रकाश में कर्मचारीगण की जारी सेवा समाप्ति आदेश न्यायोचित है और वे किसी भी सहायता के अधिकारी नहीं हैं। श्री व्यास ने यह भी व्यक्त किया है कि कर्मचारीगण को समझौते के आधार पर इस प्रकरण के निराकरण तक 50% वेतन का भुगतान किया जा रहा है जिसके भी वे अधिकारी नहीं हैं। कर्मचारीगण को जारी सेवा समाप्ति आदेश उन्हें जारी करने के दिनांक 26-11-93 से ही उचित एवं वैध घोषित किया जावे।

8. प्रथम पक्ष की ओर से विद्वान अधिवक्ता श्री के.एस. खानूजा का तर्क है कि द्वितीय पक्ष की ओर से कर्मचारीगण को सेवा से पृथक करने की कार्यवाही प्रभावशील स्तरीय स्थाई आज्ञाओं के विपरीत होने से प्रारंभ से ही अवैध एवं अनुचित है। क्योंकि किसी भी कर्मचारी को स्तरीय स्थाई आज्ञाओं की व्यवस्था के अनुसार दुराचरण के लिए तब तक सेवा से पृथक नहीं किया जा सकता जब तक उसे आरोप पत्र दिया जाकर सुनवाई का अवसर देते हुए की गई विभागीय जांच में दुराचरण प्रमाणित नहीं पाये जाते। कर्मचारीगण को जारी सेवा समाप्ति आदेश दिनांक 26-11-93 के पूर्व अविवादित रूप से स्तरीय स्थाई आज्ञाओं की उक्त प्रक्रिया का पालन नहीं किया गया है। श्री खानूजा ने व्यक्त किया है कि कर्मचारी बाल्मीकी तथा महेश सिंह का नाम प्रदर्श डी-1 की शिकायत में नहीं है। जबकि श्री उत्तम ने अपने न्यायालयीन कथन में मारपीट करने वालों में महेश कुमार सिंह, बाल्मीकी चन्द्राकर, हरिहर सिंह, तथा लालेश्वर तिवारी के नाम भी बताए हैं। उक्त साक्षी का कथन पश्चात् विचार पर आधारित होने से विश्वसनीय नहीं है। श्री खानूजा ने तर्क प्रस्तुत किया है कि किसी भी कर्मचारी के विरुद्ध उचित एवं पर्याप्त साक्ष्य प्रस्तुत कर दुराचरण प्रमाणित नहीं किए जा सके हैं। नियोक्ता द्वारा सुनियोजित तरीके से मनगढ़ंत तथ्यों के आधार पर दुराचरण आरोपित किए गए हैं और इन्हीं को प्रमाणित करने का असफल प्रयास हितबद्ध साक्षियों के कथन न्यायालय में कराकर किया गया है। हड़ताल के दौरान तथाकथित उग्र गतिविधियों के संबंध में नियोक्ता की ओर से स्वतंत्र साक्षियों के कथन नहीं कराए गए हैं। जिनके अभाव में कर्मचारीगण को आरोपित दुराचरण का दोषी नहीं ठहराया जा सकता है। कर्मचारियों को उनकी यूनियन संबंधी गतिविधियों के लिए विक्टीमाईज करने की नियत से प्रताड़नास्वरूप बरखास्त किया गया है। न्यायालय में प्रस्तुत साक्ष्य से कर्मचारियों के विरुद्ध आरोपित दुराचरण प्रमाणित नहीं हुए हैं। श्री खानूजा से कर्मचारी बाल्मीकी चन्द्राकर के बारे में व्यक्त किया है कि उसे जारी सेवा समाप्ति आदेश प्रदर्श डी-96 में दिनांक 13-11-93 को एम.ए. शमी को जब वह वर्कर्सशाप जा रहा था, रोककर महेश कुमार सिंह के साथ मिलकर उसके सहयोग से, उसे पकड़कर पटकने एवं घूसे से मारने का आरोप लगाया गया है। जबकि शमी द्वारा की गई एफ.आई.आर. प्रदर्श डी-6 में घटना का उल्लेख प्रदर्श डी-96 जैसा नहीं है। साक्षी शमी के न्यायालयधीन कथन एवं उसके द्वारा की गई रिपोर्ट में विरोधाभास है। श्री शमी ने अपने कथन में बाल्मीकी द्वारा उसे कंधे से पकड़कर ऊपर की ओर उछालकर नीचे की ओर से पटकने का उल्लेख किया है जबकि एफ.आई.आर. में इस तरह का उल्लेख बाल्मीकी के संबंध में नहीं किया गया है। श्री शमी ने अपने इलाज के संबंध में दिनांक 2-1-94 से 9-1-94 की चिकित्सा पर्चियां पेश की हैं जबकि घटना दिनांक 13-11-93 की बताई गई है। कर्मचारी बाल्मीकी ने घटना को अस्वीकार किया है। ऐसी स्थिति में उसके विरुद्ध आरोपित दुराचरण विरोधाभासी साक्ष्य

के आधार पर प्रमाणित नहीं माना जा सकता है। श्री खानूजा ने कर्मचारी महेश कुमार सिंह के बारे में भी यह तर्क प्रस्तुत किया है कि नियोक्ता द्वारा उसके विरुद्ध किसी विशेष दुराचरण को प्रमाणित नहीं किया गया है। उसके विरुद्ध प्रस्तुत साक्ष्य भी विश्वसनीय नहीं है क्योंकि कर्मचारी दि. 12-11-93 की सुबह से ही अपने घर पर परसदा गांव चला गया था। कर्मचारी ने अपने स्वयं के कथन में बताया है कि वह दिनांक 11-11-93 को दूसरी पाली दोपहर दो बजे से रात्रि 10 बजे तक कारखाने में था। 11-11-93 को रात्रि पाली में कोई मजदूर काम पर नहीं आये तो मैनेजमेन्ट ने दूसरी पाली के सभी श्रमिकों को काम करने के लिए रोक लिया। दिनांक 12-11-93 को सुबह 6 बजे कारखाने के बाहर आया और सीधा अपने घर परसदा गांव चला गया। कर्मचारी का उचित कथन स्वाभाविक है क्योंकि दो पालियों में लगातार काम करने के बाद उसका वहां रुकना संभव नहीं था। कर्मचारी ने 12-11-93 को दो बजे दोपहर ड्यूटी पर आना बताया है और कहा है कि कारखाने गेट पर तैनात गार्ड लोगों ने उसे ड्यूटी पर नहीं जाने दिया। उसने यह भी बताया कि कारखाने का गेट बंद था। इस कर्मचारी महेश कुमार सिंह के विरुद्ध आरोपित दुराचरण प्रमाणित नहीं हुए हैं। कर्मचारी ने स्वयं को यूनियन का सदस्य होने से भी इंकार किया है। अत: उसका हड़ताल में सम्मिलित होना प्रमाणित नहीं है। कर्मचारी लालेश्वर तिवारी के संबंध में श्री खानूजा का तर्क है कि उसकी सेवा समाप्ती के आदेश भी 93 में 12-11-93 की घटना में सम्मिलित होने का आरोप लगाया गया है। किन्तु प्रदर्श डी-1 श्री उत्तम द्वारा की गई रिपोर्ट में उसका नाम नहीं है। एक्जिक्यूटिव डायरेक्टर श्री खत्री के साथ तथाकथित धक्का-मुक्की के संबंध में भी नियोक्ता के साक्षी श्री उत्तम के न्यायालयीन कथन में लालेश्वर तिवारी का नाम नहीं बताया है। नियोक्ता के साक्षी श्री खत्री का न्यायालयीन कथन तथा उनके द्वारा की गई रिपोर्ट में भी विरोधाभास है। उक्त आधार पर भी कर्मचारी के विरुद्ध दुराचरण प्रमाणित नहीं हुए हैं। खत्री के संबंध में श्री उत्तम का बयान नियोक्ता के ही अन्य साक्षी श्री राव के बयान से असत्य प्रमाणित होता है। नियोक्ता के साक्षी क्र. 6 श्री एस.के. सिंह ने अपने कथन में दिनांक 12-11-93 को श्री राव एवं श्री उत्तम से मुलाकात होना नहीं बताया है। प्रदर्श डी-4 की रिपोर्ट श्री खत्री ने कारखाना प्रबंधक को भेजते हुए उस पर कार्यवाही के निर्देश देना श्री सिंह ने बताया है। किन्तु श्री खत्री के कथन एवं प्रदर्श डी-4 के पत्र में भी विरोधाभासी तथ्य सामने आए हैं। श्री खानूजा ने नियोक्ता के साक्षी श्री जे.सी. यादव के कथन का हवाला देते हुए बताया है कि इस साक्षी ने भी श्री खत्री के साथ हुई घटना की पुष्टि नहीं की है। प्रदर्श डी-2 की रिपोर्ट श्री राव ने दिनांक 12-11-93 को फामगढ़ में करना बताया है। इस रिपोर्ट में भी खत्री के साथ तथाकथित घटना का उल्लेख नहीं है। इसी प्रकार श्री राव के कथन के आधार पर श्री खानूजा का तर्क है कि उसने मारने वालों के नाम नहीं बताए हैं। बयान में साक्षी ने उसके खरोंच आना बताया है जबकि रिपोर्ट में सूजन होना बताया है। राव द्वारा की गई रिपोर्ट डी-2 में केवल 3 नाम हैं। जिनके नाम रिपोर्ट में लिखे गए हैं। उनके अलावा दूसरे नाम उसने अपने कथन में बताये हैं। रिपोर्ट में उल्लेखित नाम बयान में नहीं बताए हैं। नियोक्ता की ओर से साक्षियों ने घटनाओं को बढ़ाचढ़ा कर पेश किया है। किसी भी विशेष घटना को प्रमाणित किए बिना कर्मचारीगण को मात्र हड़ताल का जिम्मेदार मानकर दंडित नहीं किया जा सकता। श्री खानूजा ने सामान्य घटनाओं का उल्लेख करते हुए बताया है कि दिनांक 11-11-93 को केन्टीन के ठेकेदार श्री अग्रवाल के साथ मारपीट करने एवं केन्टीन में लूट करने संबंधी कोई प्रत्यक्ष साक्ष्य प्रस्तुत नहीं की गई हैं। केन्टीन ठेकेदार की रिपोर्ट पेश की गई है किन्तु उसे ठेकेदार के बयान से प्रमाणित नहीं किया गया है। श्री खानूजा का यह भी तर्क है कि दिनांक 11-11-93 से ही पुलिस वहां मौजूद थी किन्तु उनके द्वारा कोई कार्यवाही न किया जाना ही इस बात का प्रमाण है कि बताई गई घटनाओं का कोई अस्तित्व नहीं था। श्री राव ने दिनांक 12-11-93 को शाम को पुलिस का आना बताया है, जबकि शमी ने दिनांक 11-11-93 को ही पुलिस चौकी बनाए जाने की बात की है। श्री खत्री ने भी यह बताया है कि दिनांक 11-11-93 को ही पुलिस वाले आ गए थे। इस प्रकार नियोक्ता के साक्षियों के कथन एवं प्रस्तुत दस्तावेजों में उत्पन्न विरोधाभासों का उल्लेख करते हुए श्री खानूजा ने यह बताने का प्रयास किया है कि कर्मचारीगण के विरुद्ध आरोपित दुराचरण न केवल बनावटी है अपितु वे निराधार एवं असत्य भी हैं। श्री खानूजा ने विशेष बल इस बात पर दिया है कि कर्मचारीगण के विरुद्ध आरोपित दुराचरण के संबंध में प्रस्तुत दस्तावेजों को उचित साक्ष्य के माध्यम से प्रमाणित नहीं किया जा सका है।

9. श्री खानूजा का मुख्य तर्क यह भी है कि नियोक्ता द्वारा बरखास्तशुदा कर्मचारियों के साथ भेदभावपूर्ण नीति अपनाई गई है। नियोक्ता के साक्षी श्री राव ने अपने न्यायालयीन कथन के पृष्ठ 5 में क्रूटपरीक्षण के दौरान बताया है कि 15 लोगों में से हमारे द्वारा खदान के 4 तथा कारखाने के 4 कर्मचारियों के खिलाफ कार्यवाही की गई है। बाकी लोग काम कर रहे हैं। उनके खिलाफ कार्यवाही नहीं की गई है। श्री खानूजा ने नियोक्ता के साक्षी श्री जे.सी. यादव के कथन का उल्लेख करते हुए बताया है कि हमला एवं मारपीट करने वाले आदमियों की संख्या 300 होना बताई है। जबकि अविवादित रूप से सबके विरुद्ध कार्यवाही नहीं की गई । श्री खानूजा ने यह भी तर्क प्रस्तुत किया है कि प्रकरण में स्वतंत्र साक्षियों के कथन नहीं कराए गए हैं। पुलिस वालों, कालोनी के निवासी, महिला क्लब की महिलाओं एवं शिकायत करने वाली महिलाओं, ट्रक संचालकों एवं डेरी वालों के कथन नियोक्ता की ओर से नहीं कराए गए हैं ऐसी स्थिति में इनसे संबंधित तथ्यों एवं दुराचरण संबंधी दस्तावेजों को प्रमाणित नहीं माना जा सकता। श्री खानूजा का यह भी तर्क है कि नियोक्ता द्वारा आरोपित दुराचरण के संबंध में आरोप पत्र दिये जाकर जांच करने का प्रयास नहीं किया गया। यदि ऐसा किया जाना था तो आरोप पत्र जारी किए जाकर जांच अधिकारी की नियुक्ति आदि की जा सकती थी। किन्तु ऐसा न करते हुए निराधार एवं असत्य तथ्यों को आधार बनाते हुए विभागीय जांच की कार्यवाही से बचने के लिए जांच के लिए अव्यवहारिक वातावरण संबंधी मनगढ़न्त कहानी बनाई गई है। विभागीय जांच न करने के लिए पर्याप्त कारण प्रमाणित नहीं किए जा सके हैं। ऐसी स्थिति में नियोक्ता द्वारा की गई समस्त कार्यवाही अवैध घोषित करने योग्य है। श्री खानूजा ने कारखाने के कर्मचारियों को प्रभावशील स्तरीय स्थाई आज्ञाओं की धारा 12(एक) (एफ) में कुछ अलग से जोड़ा जाना बताया गया है। श्री खनूजा ने 1984 फस्ट एल.एल.जे. में पृष्ठ 16 में प्रतिपादित न्याय सिद्धान्त का उल्लेख करते हुए बताया है कि ऐसे दुराचरण जो स्तरीय स्थाई आज्ञाओं में दुराचरण के रूप में सम्मिलित नहीं किए गए हैं उनके संबंध में उनके लिए कर्मचारी को दंडित नहीं किया जा सकता है। श्री खनूजा ने हड़ताल केवल 26-11-93 तक ही होना बताया है। उसके बाद नियोक्ता द्वारा अवैध तालाबंदी की गई थी जिसके लिए कर्मचारियों को दंडित नहीं किया जा सकता । श्री खनूजा का यह भी तर्क है कि दिनांक

26-12-93 से ही कारखाना चालू हो गया था। दिनांक 4-1-94 तक कर्मचारी काम पर आ गए थे। उस दिन के पत्र के आधार पर माफीनामा लिखे जाने का कोई प्रश्न ही पैदा नहीं होता। कर्मचारियों को कुछ राशि भुगतान करने के हस्ताक्षर लिए गए हैं। और उन पर कुछ लिखा लिया गया है। इस संबंध में नियोक्ता के साक्षी एस.के. सिंह ने भी स्पष्ट किया है कि कर्मचारियों को माफी मांगने पर कार्य पर रखा जाना असत्य है। श्री खनूजा का यह भी तर्क है कि कर्मचारियों की ओर से साक्षी श्री कश्यप द्वारा की गई स्वीकारोक्ति नकारात्मक प्रश्न के माध्यम से नहीं मानी जा सकती। श्री खनूजा ने विशेष बल इस बात पर दिया है कि कर्मचारीगण भेदभाव की नीति के आधार पर ही चाही गई समस्त सहायता प्राप्त करने के अधिकारी हैं। श्री खनूजा ने अपने तर्कों के समर्थन में 1981 लेब आई सी 1318, 1962 एल एल जे (1) 274 ए आई आर 1984 पृष्ठ 629, 1993 एम पी एल जे पृष्ठ 741/1996 (सेकेन्ड) एम.पी.डी. नोट क्र. 52 तथा 1960 (फर्स्ट) एल.एल.जे. पृष्ठ 654 प्रतिपादित न्याय सिद्धान्तों का उल्लेख किया है। तथा द्वितीय पक्ष नियोक्ता की ओर से प्रस्तुत समस्त न्याय दृष्टांतों को तथ्यों की भिन्नता के कारण प्रस्तुत प्रकरण में लागू न किए जाने योग्य बताया है। विकल्प में श्री खनूजा का यह भी तर्क है कि यदि कर्मचारीगण के विरुद्ध दुराचरण प्रमाणित भी पाया जाता है तब भी कर्मचारीगण न्यायालय द्वारा दुराचरण के दोषी पाए जाने के दिनांक तक का पिछला पूरा वेतन पाने के अधिकारी हैं, क्योंकि कर्मचारीगण के विरुद्ध विभागीय जांच नहीं की गई है अतः उनका सेवा समाप्ति आदेश उसे जारी किए जाने के दिनांक से लागू नहीं किया जा सकता है। इस संबंध में श्री खनूजा ने गुजरात स्टील ट्यूब के प्रकरण में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित न्याय सिद्धान्त का उल्लेख किया है। श्री खनूजा ने कर्मचारीगण को जारी सेवा समाप्ति आदेश अवैध घोषित कर उन्हें बिल्कुल समस्त वेतन के साथ सेवा में पुनःस्थापित करने के औचित्य को प्रतिपादित किया है।

10. प्रकरण में प्रस्तुत साक्ष्य एवं दस्तावेजों के आधार पर यह तथ्य विवादित नहीं है कि द्वितीय पक्ष संस्थान में दिनांक 11-11-93 की रात्रि की पाली से हड़ताल प्रारम्भ हुई। यह भी विवादित नहीं है कि दिनांक 11-11-93 को ही उपश्रमायुक्त के समक्ष प्रथम पक्ष संघ द्वारा जारी मांग पत्र के संबंध में संराधन कार्यवाही की बैठक आयोजित की गई थी। जिसमें प्रदर्श डी-26 की आदेशिका लिखी गई। उक्त दिनांक को उभय पक्ष के मध्य विवाद को संराधन अधिकारी द्वारा हस्तगत किया जाकर प्रकरण पंजीबद्ध किया गया एवं आगामी बैठक दिनांक 16-11-93 को नियत की गई। संराधन अधिकारी द्वारा उभय पक्ष को यह भी परामर्श दिया गया कि ऐसा कोई कार्य न करें जिससे औद्योगिक शांति भंग हो। उसी दिन दोनों पक्षों की स्थिति को देखते हुए संराधन अधिकारी ने पुनः चर्चा प्रारंभ की और उभय पक्षों के मध्य कोई सहमति की संभावना न देखते हुए संराधन कार्यवाही को समाप्त घोषित किया। प्रदर्श डी-28 का पत्र उप श्रमायुक्त द्वारा अध्यक्ष सीमेंट श्रमिक संगठन (प्रथम पक्ष) को भेजा जाना भी प्रथम पक्ष की ओर से विवादित नहीं किया गया है। इस पत्र में उप श्रमायुक्त द्वारा प्रथम पक्ष को समझाइश दी गई है कि वे ऐसा कोई कार्य न करें जिससे औद्योगिक अशांति उत्पन्न हो और राष्ट्रीय उत्पादन में क्षति हो। यह तथ्य भी विवादित नहीं है कि प्रदर्श डी-31 का अंतरिम आदेश श्रम न्यायालय बिलासपुर द्वारा कैम्प रायपुर में प्रकरण क्रमांक 227/93 एम. पी. आई. आर. में दिनांक 13-11-93 को पारित किया गया। जिसमें प्रथम पक्ष को भी पक्षकार बनाया गया था। इस अंतरिम आदेश में प्रथम पक्ष के विरुद्ध यह निषेधात्मक आदेश पारित किया गया था कि दिनांक 11-11-93 से प्रारंभ अवैध हड़ताल को आगे जारी न रखें और अपने-अपने काम पर लौट आएं तथा किसी भी कर्मचारी को हड़ताल जारी रखने के लिए न उकसायें, हिंसा न करें तथा कामगारों को काम पर लौटने को कहें। प्रथम पक्ष साक्षी श्री राधेश्याम कश्यप ने अपने मुख्य परीक्षण में भी इस बात को स्वीकार किया है कि दिनांक 11-11-93 को संराधन कार्यवाही समाप्त होने पर शाम को मजदूरों की सभा हुई जिसमें मजदूरों ने कहा कि हमें बोनस नहीं दिया जा रहा है इसलिए हड़ताल करेंगे। उसी दिन रात को 10 बजे के फेक्ट्री गेट 40 मीटर पहले झंडे वगैरह लगाकर पंडाल लगाए रात्रि में भी शिफ्ट में कोई काम पर नहीं गया। दिनांक 12-11-93 को सुबह 7.45-8 बजे हमारी यूनियन के अध्यक्ष श्री संबल चक्रवर्ती भाषण दे रहे थे वहां करीब 500-600 आदमी थे। इस साक्षी ने यह भी स्वीकार किया है कि भीड़ में साईकल पर खत्री साहब गिर गए। गिरने पर वे लोग वापस कालोनी आ गए। कूट परीक्षण में इस साक्षी ने बताया है कि मैं इस यूनियन का कार्यकारी अध्यक्ष था। इस पद पर मैं आज भी हूं। जिनका प्रकरण कोर्ट में चल रहा है उनमें से तीन लोग श्री हरिहर सिंह यूनियन के संगठन मंत्री श्री उमाशंकर गिरी एवं श्री लालेश्वर तिवारी यूनियन के उपाध्यक्ष थे। इस साक्षी ने यह भी स्वीकार किया है कि श्री खत्री जी के साइकिल पर गिरने के बाद वहां किसी और घटना की जानकारी मुझे नहीं है क्योंकि मैं यूनियन आफिस की मीटिंग मे चला गया था। साक्षी ने यह भी बताया है कि हड़ताल के दौरान हम लोग पंडाल में या यूनियन आफिस में रहते थे। साक्षी का कहना है कि दिनांक 11-11-93 से 26-12-93 तक वह कालोनी गेट की तरफ नहीं गया है, डेरी की तरफ भी नहीं गया। उसने इस बात की जानकारी भी न होना बताया है कि डेरी में काम करने वालों को कुछ लोगों ने रोका अथवा नहीं रोका। डेरी के संबंध में यूनियन एवं मैनेजमेंट की कलेक्टर द्वारा बैठक बुलाए जाने की जानकारी मुझे है। तारीख मुझे याद नहीं है। उसने यह भी बताया है कि उसने मीटिंग में भाग लिया था। साक्षी ने दिवाली के दिन डेरी की एक गाय मरना भी स्वीकार किया है। किन्तु गाय, दूध न निकालने के कारण मरी यह अस्वीकार किया है। साक्षी ने यह भी स्वीकार किया है कि "पेपर में सूचनायें छपती थीं कि हड़ताल अवैध है कर्मचारी काम पर आ जावें। यह सही है कि इन सूचनाओं के आधार पर हमने कर्मचारियों को सूचित नहीं किया वे काम पर चले जावें। साक्षी ने यह स्पष्ट कहा कि बिना समझौते के ऐसी सूचना कैसे दे सकते थे। इस साक्षी ने इस बात को भी स्वीकार किया है कि "जिन लोगों के यह प्रकरण लंबित हैं उन लोगों के टर्मिनेशन आडर मैंने पढ़े हैं। इन्हें जारी टर्मिनेशन आदेश में लिखे आरोपों से मैं जुड़ा हुआ नहीं हूं। स्पष्ट कहा कि यह लोग जहां थे मैं वहीं था। मैं इन आरोपों से जुड़ा होता तो मुझे भी निकाल देते।" आगे इस साक्षी ने यह भी स्वीकार किया है कि दिनांक 6-1-94 को वह बिलासपुर जेल में था। जेल में दिनांक 25-12-94 से 11-1-94 तक था। हड़ताल के संबंध में जेल में था। साक्षी ने अपने साथ जेल में लालेश्वर तिवारी, उमा शंकर गिरी, लक्ष्मी गिरी गोस्वामी, हरिहर सिंह को भी होना बताया। साक्षी की उक्त स्वीकारोक्ती के आधार पर बरखास्तशुदा कर्मचारियों के विरुद्ध अधिकांश दुराचरण सही होने का अनुमान लगाया जा सकता है। और इस प्रकार के प्रकरणों में आरोप का संदेह से परे प्रमाणित होना आवश्यक नहीं होता है। यदि आरोपों के संबंध में युक्तियुक्त संभावनाओं के आधार पर अनुमान निकाला जा सकता है, तो यह आरोपों की प्रमाणिकता के लिए पर्याप्त है। (न्याय दृष्टांत 1997 एल.एल.आर. पृष्ठ 649 दृष्टव्य

है) हड़ताल एवं हड़ताल के दौरान जिन परिस्थितियों को प्रथम पक्ष के कार्यकारी अध्यक्ष एवं साक्षी द्वारा स्वीकार किया गया है। उनके आधार पर यह नहीं कहा जा सकता है कि बरखास्तशुदा कर्मचारी पूरी तरह निर्दोष हैं एवं उन्हें विक्टिमाईज किया गया है। कर्मचारी लालेश्वर तिवारी ने नियोक्ता द्वारा बताई किसी भी घटना के संबंध में जानकारी न होना बताया है। उसने बताया है "दिनांक 11-11-93 को हड़ताल किस प्रकार शुरू हुई इसकी जानकारी मुझे नहीं है। मैं दिनांक 11-11-93 को हड़ताल में सम्मिलित नहीं था। मैं उस दिन काम पर नहीं गया था। इसलिए किसी श्रमिक को उकसाने या भड़काने का प्रश्न नहीं है। कर्मचारी ने दिनांक 11-11-93 को धनतेरस का दिन होना बताते हुए अपने गांव परसदा में घर की पुताई करना और इस कारण ड्यूटी पर न आना बताया है। साक्षी ने गांव कारखाने से लगभग डेढ़ किलोमीटर दूर होना बताया है। दिनांक 12-11-93 को भी उसने ड्यूटी पर न आना बताया है। किन्तु साक्षी ने क्रूट परीक्षण में स्वीकार किया है कि दिनांक 11-11-93 एवं 12-11-93 के लिए न तो उसने छुट्टी की दरखास्त दी थी और न ही छुट्टी ली थी। इस पर से कर्मचारी का उक्त बचाव स्वाभाविक प्रतीत नहीं होता है। कर्मचारी ने स्वयं को यूनियन का पदाधिकारी होना बताया है। फिर भी यूनियन के कार्यकारी अध्यक्ष श्री कश्यप ने अपने कथन में हड़ताल के दौरान लालेश्वर तिवारी के वहां अनुपस्थिति के बाबत नहीं कहा है। जिससे तिवारी का यह बचाव सारहीन है। वाल्मीकी चन्द्राकर ने भी दिनांक 11-11-93 को ड्यूटी समाप्त कर अपने गांव परसदा जाना बताया है। उस दिन फिर गांव से वापिस न लौटना भी बताया है। कर्मचारी ने 12-11-93 को सुबह ड्यूटी पर आना बताया है और कहा है कि कारखाने के मेन गेट पर उसे बताया गया कि हड़ताल हो गई है वापस जाओ। ऐसी स्थिति में उस पर दिनांक 12-11-93 की घटना के संबंध में लगाए गए आरोप पूरी तरह असत्य नहीं कहे जा सकते। इस साक्षी ने क्रूट परीक्षण में यह भी स्वीकार किया है कि उसे जनवरी 94 में पुलिस ने गिरफ्तार किया। उसने जांजगीर अदालत में 12-13 मुकदमें चलना भी स्वीकार किया है। इस साक्षी ने कुछ प्रकरण में जीतना बताया है। किन्तु उनकी नकलें पेश नहीं की हैं। साक्षी ने यह भी स्वीकार किया है कि दिनांक 11-11-93 को रात में प्लांट में हड़ताल हो गई। उसके साथ ही खादान में हड़ताल हो गई। हड़ताल कब तक चली यह नहीं पता। फिर कहा दो-ढाई महीने तक चली। इसी साक्षी ने गोपाल नगर में 144 धारा तीन महीने तक लगी रहना बताया है। इस अवधि में पुलिस फोर्स भी पूरे गोपाल नगर में मौजूद होना बताया है। इस पर से हड़ताल के दौरान की विस्फोटक परिस्थितियों की ही पुष्टि होती है। कर्मचारी ने प्रत्येक घटना में स्वयं की अनुपस्थिति एवं घटना की जानकारी न होना ही व्यक्त किया है। किन्तु स्वत्व के कथन में उसकी ओर से यह बचाव अभिवचित न होने से बचाव पश्चात विचार पर भी आधारित प्रतीत होता है। कर्मचारी महेश कुमार सिंह ने भी हड़ताल होना स्वीकार किया है किन्तु दिनांक 12-11-93 से ही ड्यूटी के बाद अपने घर पर सदा चले जाना बताया है। इस साक्षी ने दिनांक 15-11-93 को काम पर जाना बताया है। और कहा है कि भीड़भाड़ होने से लौट आया। कर्मचारी ने यह भी स्वीकार किया है कि वह हड़ताल की अवधि में काम पर नहीं गया क्योंकि माहौल खराब था। कर्मचारी ने स्वयं को किसी भी घटना का भागीदार होने से इंकार किया है किन्तु उसका यह बचाव भी विश्वसनीय प्रतीत नहीं होता क्योंकि उसने क्रूट परीक्षण में कहा है कि मुझे याद नहीं कि जनवरी 94 में पुलिस ने मुझे गिरफ्तार किया था। कर्मचारी का उक्त कथन पूरी तरह अस्वाभाविक ही प्रतीत होता है। क्योंकि गिरफ्तारी जैसी बात भूल जाना स्वाभाविक नहीं है। कर्मचारी ने यह भी स्वीकार किया है कि "यह सही है कि हड़ताल के दौरान गोपाल नगर में धारा 144 प्रभावशील थी तथा पुलिस फोर्स भी तैनात थी। जो गांव तक जाता था।" कर्मचारी ने अपनी यूनियन का नाम सीमेंट श्रमिक संगठन ही बताया है तथा किसी भी घटना में स्वयं को उपस्थित होना मना किया है। कर्मचारी हरिहर सिंह ने दिनांक 11-11-93 को उपश्रमायुक्त बिलासपुर के यहां बैठक में भाग लेना स्वीकार किया है। और कहा है कि वहां से वापिस आकर शाम को 5 बजे हम लोग फैक्ट्री पहुंचे। जब मैं वहां पहुंचा तो मेरा भाई गांव से मुझे लेने आया था क्योंकि पिता जी की तबियत ज्यादा खराब थी। इस प्रकार कर्मचारी ने दिनांक 11-11-93 से 14-11-93 तक कारखाने में न आना बताया है। किन्तु क्रूट परीक्षण में पिताजी की तबियत खराब होने के संबंध में और उन्हें डाक्टर को दिखाने बाबत कोई प्रमाण प्रस्तुत करने में असमर्थ रहा है। कर्मचारी ने बताया है कि उसके पिताजी व भाई गांव में रहते थे और मैं कालोनी में रहता था। कर्मचारी ने दिवाली का त्यौहार भी गांव में मनाना बताया है। उक्त कथन भी स्वाभाविक नहीं है क्योंकि यदि उसके पिता की तबियत खराब थी तो दिवाली का त्यौहार मनाने का प्रश्न नहीं था। और यदि उक्त बात सही नहीं है तो उसका अपने कालोनी स्थित मकान में दिवाली न मनाना अस्वाभाविक है। कर्मचारी के इस कथन से इस बात को भी बल मिलता है कि कालोनी में दीवाली नहीं मनाई गई। इस कर्मचारी ने स्वयं को भी पुलिस द्वारा गिरफ्तार किया जाना बताया है। उससे यह भी बताया है कि जिन अन्य लोगों को नौकरी से हटाया गया उनकी सेवा समाप्ति आदेश नहीं पढ़ा। अपना भी आदेश नहीं पढ़ा जैसे आदेश मिला वैसे ही संबल दादा को ले जाकर दे दिया। इस प्रकार इस कर्मचारी द्वारा भी लिया गया बचाव अस्वाभाविक होने से विश्वसनीय प्रतीत नहीं होता है।

11. इस प्रकार प्रकरण में आई समस्त साक्ष्य से हड़ताल की एवं हड़ताल के दौरान की परिस्थितियां सामान्य न होना पूरी तरह प्रमाणित है। कर्मचारीगण की ओर से प्रस्तुत यह तर्क कि वे आरोपित घटनाओं के समय उपस्थित नहीं थे स्वीकार किये जाने योग्य नहीं हैं क्यों कि इस हेतु उनकी ओर से स्वत्व के कथन में अभिवचन नहीं किए गए। साथ ही प्रथम पक्ष संघ के कार्यकारी अध्यक्ष श्री राधेश्याम कश्यप जिन्होंने अपनी उपस्थिति में हड़ताल की घोषणा की जाना बताया है तथा यह कहा है कि "यह कहना सही नहीं है कि उस दिन मीटिंग के बाद थक जाने बाद घर जाकर सो गया था, स्वयं कहा कि खाना खाकर वापस आ गया था क्योंकि हड़ताल की घोषणा कर दी गई थी। वे इस महत्वपूर्ण साक्षी ने कर्मचारीगण जिन्हें बरखास्त किया गया को घटना स्थल से अनुपस्थित रहना नहीं बताया गया है।" अपितु यह कहा गया है कि ये लोग जहां थे मैं वहीं था। मैं इन आरोपों से जुड़ा होता तो मुझे भी निकाल देते । इसने यह भी स्वीकार किया है कि जारी टर्मिनेशन आदेश में लिखे आदेशों से मैं जुड़ा हुआ नहीं था । साक्षी का यह कथन कर्मचारीगण के विरुद्ध आरोपित दुराचरण के संबंध में स्वीकारोक्ति है। वैसे भी कर्मचारीगण द्वारा आरोपित दुराचरण से संबंधित घटनाओं के समय अन्यत्र उपस्थित रहने संबंधी बचाव को विधिवत प्रमाणित नहीं गया किया है। वे यह भी प्रमाणित नहीं कर सके हैं कि उनका घटना स्थल पर उपस्थित होना संभव ही नहीं था। जहां तक कर्मचारीगण की ओर से नियोक्ता के साक्षियों के कथन के विरोधाभासों के आधार पर प्रस्तुत यह तर्क कि कर्मचारीगण के विरुद्ध शंका से परे दुराचरण प्रमाणित नहीं हुआ है भी

स्वीकार किए जाने योग्य नहीं है क्योंकि ऐसी प्रमाणिकता की आवश्यकता केवल आपराधिक विचारण में ही होती है। प्रस्तुत प्रकरण में प्रमाणिकता का उक्त स्तर आवश्यक नहीं है। द्वितीय पक्ष की ओर से नियोक्ता के वरिष्ठ अधिकारी द्वारा कर्मचारी के विरुद्ध दुराचरण प्रमाणित करने के लिए अपने कथन लिपि बद्ध कराए हैं । जिन्हें केवल यह कहकर कि कर्मचारी अन्यंत्र उपस्थित थे नहीं झुठलाया जा सकता। कर्मचारीगण के विरुद्ध जैसा कि उनके सेवा समाप्ती आदेश से ही प्रकट है। गंभीर प्रकार के दुराचरण आरोपित हैं कि जिनमें अवैद्य हड़ताल करना, हड़ताल के लिए कर्मचारियों को उकसाना कार्य के इच्छुक कर्मचारियों एवं वरिष्ठ अधिकारियों के साथ मारपीट करना, अशांति का वातावरण निर्मित करना आदि गंभीर दुराचरण के कृत्य सम्मिलित हैं। कर्मचारीगण की ओर से प्रस्तुत यह तर्क भी विशेष बल नहीं रखता कि नियोक्ता की ओर से पुलिस, महिला क्लब, आवासीय कालोनी के निवासी, ट्रक संचालक आदि के कथन नहीं कराए गए हैं क्योंकि नियोक्ता के वरिष्ठ अधिकारियों द्वारा इस संबंध में प्रदर्श डी-1 लगायत डी-146 तक के दस्तावेज प्रदर्शित किए गए हैं । जिनमें प्रदर्श डी- 29 केन्टीन ठेकेदार का कार्यपालक निर्देशक को केन्टीन के अंदर हड़तालो कामगारों द्वारा लूटपाट करने और उसके साथ धक्का मुक्की करने यावत लिखा गया पत्र है। प्रदर्श डी-33 लगायत 35 हड़ताल की अवधि में विस्फोटक संबंधी समाचार पत्र में प्रकाशित पत्र है। प्रदर्श डी-39 श्रीमती शशी प्रभा सिंह महिला क्लब उप उपाध्यक्ष द्वारा लिखा गया पत्र है। प्रदर्श डी-41 व्यवहार न्यायाधीश वर्ग 1 जांजगीर द्वारा प्रकरण क्रमांक 973/93 में दिनांक 16-11-93 को पारित आदेश है। जिसमें ए बी सी डी एरिया से 500 मीटर की दूरी के अंदर किसी प्रकार का जमाव न करने, एरिया को किसी प्रकार से क्षतिग्रस्त करने, बाधा उत्पन्न न करने, हिंसात्मक या विध्वंसात्मक कार्यवाही न करने के निर्देश प्रथम पक्ष व कर्मचारियों को दिए गए हैं। इस आदेश के निर्वाह के लिए न्यायालय द्वारा पुलिस अधिकारी को लिखा गया पत्र डी-42 है। प्रदर्श डी-43 लगायत डी-56 नियोक्ता द्वारा लगाई गई सूचनाएं हैं। जिनका प्रकाशन समाचार पत्रों में किया गया जो डी-57 लगायत डी-61 तक हैं। ट्रक मालिक संघ द्वारा प्रकाशित सूचना डी-62 है। सुरक्षा विभाग के प्रतिवेदन डी-63 लगायत डी-69 हैं। इन समस्त दस्तावेजों को कर्मचारीगण की ओर से फर्जी व निराधार होना नहीं बताया गया है। जबकि कर्मचारीगण के कथन नियोक्ता की साक्ष्य लिपिबद्ध होने के उपरांत अंकित किए गए हैं। उक्त के प्रकाश में कर्मचारीगण के विरुद्ध आरोपित दुराचरण प्रमाणिकता के अपेक्षित स्तर के प्रकाश में प्रमाणित हैं। कर्मचारीगण की ओर से प्रस्तुत यह तर्क की उनके साथ भेदभाव की नीति अपनाई गई है भी स्वीकार किए जाने योग्य नहीं हैं क्योंकि कर्मचारीगण की ओर साक्षी श्री राधेश्याम कश्यप ने यह तथ्य स्वीकार किया है कि जारी टर्मिनेशन आदेश में लिखे आरोपों से वह जुड़ा हुआ नहीं था। यदि इन आरोपों से जुड़ा हुआ होता तो मुझे निकाल देते। इस साक्षी ने कूटपरीक्षण में यह भी स्वीकार किया है कि प्रदर्श डी-140 के ए से ए भाग में उसके हस्ताक्षर हैं। बी से बी भाग में 1255/- की प्राप्ति पर उसके हस्ताक्षर हैं उसने यह भी बताया है कि मैं हायर सेकेन्डरी तक पढ़ा हूं और कागज पर दस्तखत करने के पहले पढ़ लिया था। प्रदर्श डी-140 यह पत्र है जिसमें कर्मचारियों द्वारा की गई गलतियों को महसूस किया जाकर गलतियों को न दोहराने का विश्वास दिलाने संबंधी द्वितीय पक्ष नियोक्ता की ओर से उल्लेखित तथ्यों से सहमति दर्शाई गई है। और भविष्य में किसी प्रकार की हड़ताल या अवैध अनुशासनहीनता की कार्यवाही न करना लिखा गया है। उक्त के प्रकाश में नियोक्ता का यह तर्क कि कर्मचारियों द्वारा अपनी गलतियों को स्वीकार करते हुए माफीनामा लिखने पर उन्हें काम पर लिया गया थी, बेबुनियाद नहीं है। वैसे भी भेदभाव की नीति अपनाए जाने के संबंध में कर्मचारीगण की ओर से कोई स्पष्ट अभिवचन अथवा कथन नहीं किए गए हैं। केवल नियोक्ता के साक्षी श्री राव के कथन के आधार पर कि 15 लोगों में से हमारे द्वारा 8 लोगों के खिलाफ कार्यवाही की गई है। बाकि लोगों के खिलाफ कार्यवाही नहीं की गई है। भेदभाव संबंधी बचाव का लाभ कर्मचारीगण प्राप्त करने के अधिकारी नहीं हैं। क्योंकि श्री राव ने उक्त कथन कूटपरीक्षण के दौरान अपने मुख्य परीक्षण के इस कथन के संबंध में दिया है कि "मुझे मारने वालों में 10-15 लोग थे जिन्हें मैं अच्छी तरह जानता हूं"। उक्त कथन नियोक्ता साक्षी श्री राव ने उसके साथ मारपीट करने के संबंध में किया है शेष आरोपों के संबंध में नहीं है। ऐसी स्थिति में जब तक कर्मचारीगण के विरुद्ध आरोपित समस्त दुराचरण के आरोपी कर्मचारियों के साथ भेदभाव की नीति अपनाने संबंधी तथ्य प्रमाणित नहीं किया जाता तब तक भेदभाव की नीति का लाभ नहीं दिलाया जा सकता है। कर्मचारीगण की ओर से ऐसा कहना नहीं है कि उनकी तरह ही आरोपित अन्य कर्मचारीगण को काम पर रखा जाकर केवल उन्हें ही बरखास्त कर नियोक्ता ने भेदभाव की नीति अपनाई है। उक्त के प्रकाश में भी इस संबंध में कर्मचारीगण की ओर से प्रस्तुत तर्क स्वीकार किए जाने योग्य नहीं है। कर्मचारीगण की ओर से प्रस्तुत यह तर्क भी सारहीन है कि नियोक्ता द्वारा कर्मचारीगण के विरुद्ध आरोपित दुराचरण के लिए विभागीय जांच करने का प्रयास नहीं किया गया क्योंकि प्रकरण में प्रस्तुत संपूर्ण साक्ष्य के प्रकाश में विभागीय जांच के लिए समय एवं अनुकूल परिस्थितियां होना प्रमाणित नहीं है। इस प्रकार नियोक्ता की ओर से साक्ष्य के आवश्यक स्तर के आधार पर यह प्रमाणित किया गया है कि संबंधित कर्मचारी उनके सेवा समाप्ति आदेश में आरोपित गंभीर दुराचरण के दोषी हैं उन्हें बिना विभागीय जांच के सेवा से पृथक करने की कार्यवाही भी उत्पन्न परिस्थितियों में अनुचित ठहराए जाने योग्य नहीं है। कर्मचारीगण की सेवा समाप्ति वैध एवं उचित है।

उक्त विवेचन के आधार पर वाद प्रश्न क्र. 1 व 2 का निराकरण इस प्रकार किया जाता है कि संबंधित कर्मचारी आरोपित दुराचरण के दोषी हैं तथा उन्हें सेवा से बरखास्त करने की कार्यवाही वैध एवं उचित है। कर्मचारीगण की ओर से प्रस्तुत न्याय दृष्टान्तों का लाभ तथ्यों की भिन्नता के कारण उन्हें प्राप्त करने का अधिकार नहीं है।

12. वाद प्रश्न क्र. 3

जैसा कि निर्णित किया जा चुका है कि कर्मचारीगण की सेवा समाप्ती उचित एवं वैध है। अब विचार करने हेतु केवल यह प्रश्न शेष रहता है कि कर्मचारीगण के सेवा समाप्ति आदेश को उनके दोषी निर्णित होने की तिथि से प्रभावशाली किया जाना चाहिए अथवा उन्हें जारी सेवा समाप्ति आदेश के दिनांक से ही। इस संबंध में द्वितीय पक्ष अधिवक्ता द्वारा न्याय दृष्टांत 1996 एम.पी.एल.एस.आर. पृष्ठ 546 में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित न्याय सिद्धांत का उल्लेख किया गया है व बताया गया है कि नियोक्ता द्वारा सेवा समाप्ति आदेश जारी करने के दिनांक से ही उक्त आदेश

प्रभावशील होंगे। उक्त न्याय दृष्टांत के प्रकाश में कर्मचारीगण की ओर से इस बाबत प्रस्तुत न्याय दृष्टांत 1980 (2) एस.सी.आर. पृष्ठ 146 (गुजरात स्टील ट्यूब्स लिमि. वि. गुजरात स्टील मजदूर सभा) में प्रतिपादित न्याय सिद्धांत लागू किए जाने योग्य नहीं है। वैसे भी कर्मचारीगण प्रकरण के लंबित रहते समझौते के आधार पर वेतन की 50% राशि प्राप्त कर रहे हैं। अतः निर्णित किया जाता है कि कर्मचारीगण किसी सहायता के अधिकारी नहीं हैं।

13. उपरोक्त विवेचना के प्रकाश में विवाचन हेतु विचारार्थ विषय के संबंध में मेरा निष्कर्ष है कि दिनांक 28-11-93 से सर्वश्री बाल्मीकी चन्द्राकर, महेशकुमार सिंह, हरिहर सिंह व लालेश्वर तिवारी (सभी खनिक) को नौकरी से बरखास्त किए जाने की रेमन्ड्स सीमेन्ट वर्क्स के प्रबंधन की कार्यवाही कानूनी और न्यायोचित है। संबंधित कामगार किसी अनुतोष के हकदार नहीं हैं।

14. उपरोक्तानुसार पंचाट पारित किया जाता है। पंचाट पारित करने में लगे समय का उल्लेख प्रकरण पत्रिकाओं की आदेशिकाओं में किया गया है। जिसके संबंध में उभय पक्ष सहमत रहे हैं।

भोपाल जे. एस. सेंगर, विवाचक

दिनांक 29-4-99

नई दिल्ली, 26 मई, 1999

का. आ. 1713.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. इण्डियन मैरीटाईम एंटरप्राईजेस प्रा. लि., के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-1999 को प्राप्त हुआ।

[सं. एल-31012/12/96-आई. आर. (विविध)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 26th May, 1999

S.O. 1713.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No.-2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Martitime Enterprises (P) Ltd., and their workman, which was received by the Central Government on the 26-5-99.

[No. L-31012/12/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II

MUMBAI

PRESENT :

SHRI S. B. PANSE

Presiding Officer

Reference No. CGIT-2/1 of 1998

Employers in relation to the Management of M/s. Indian Maritime Enterprises Pvt. Ltd.

And

Their Workmen

APPEARANCES :

For the Employer : Mr. S. S. Sayyed
Advocate.

For the Workmen : Mr. Jaiprakash Sawant
Advocate.

Mumbai, dated 21st April, 1999

AWARD

The Government of India, Ministry of Labour by its Order No. L-31012/12/96-IR(Misc), dated 30-12-97, had referred to the following Industrial Dispute for adjudication,

> "Whether the demand of Bombay Port Trust Employees Union for payment of legal dues to Shri S. M. Sabnis, Docks Superintendent by M/s. Indian Maritime Enterprises Pvt. Ltd. as contained in the letters annexed is legal and justified. If so, to what relief the workman is entitled?"

2. When the order of reference was received the letters mentioned in the schedule were not send. The Desk Officer was informed accordingly. He by his letter dt. 29-1-98 (Exhibit-4) forwarded a letter dtd. 14-9-94 addressed by Secretary of the Bombay Port Trust Employees Union to the Assistant Labour Commissioner (Central-II). S. M. Sabnis the workman filed a statement of claim at Exhibit-7. He contended that he was employed by M/s. Indian Maritime Enterprises Pvt. Ltd. (management) in the year 1962. He was working in the capacity of docks superintendent. It is averred that his service conditions were settled by a Memorandum of Understanding dtd. 31-10-89 arrived at between management and their workmen represented by Bombay Port Trust Employees Union.

3. The workman pleaded that he was receiving the wages as per the said understanding. However, the management discontinued to make the payment in terms of the MOU arbitrarily and violated the provisions of the Industrial Disputes Act of 1947. He retired from service w.e.f. 1st August '94. He

was paid Rs 85,000/- towards full and final settlement of his dues He accepted the amount under protest and requested for the full payment of his legal dues. But the management failed to comply with it. It is therefore, he addressed a notice to the management and then informed the Assistant Labour Commissioner that his dues are not paid.

4 The management pleaded that the matter could not be settled. The Central Government earlier declined to refer the dispute for adjudication. However, in view of the order passed by the Bombay High Court in Writ Petition No 409 of 1997 which was filed by the workman, the Government had send a reference for adjudication.

5. The workman pleaded that he is entitled to receive the balance of payment of Rs. 2,80,452 77ps towards salary, bonus, encashment of leave, gratuity and compensation. He also contended that he is entitled to 18% interest per annum on the due amount He prayed for award to that effect.

6 The management resisted the claim by the Written Statement (Exhibit-11). It is averred that the reference is barred by limitation. It is contended that at the time of retirement the workman had calculated Rs 85,000/- which contains all his legal dues and ex-gratia of Rs. 5,865.65ps on 30th July'94 in full and final settlement of all his dues. It is therefore, he is now estopped from claiming any amount. It is averred that the company reserved its right to adjust the ex-gratia payment made to the workman against any dues to be paid to the workmen if at all as his legal dues.

7 The management averred that the alleged settlement is not binding on the management. In fact the management had to sign the same under the coercion. It is pleaded that there is no leave at the credit of the workman at the time of his retirement. Hence he is not entitled to encashment of the leave as claimed. It is further contended that under the Shops and Establishments Act of 1948 leave can be accumulated upto 42 days only Hence the claim of the workman for encashment of 240 days of leave is not tenable

8. It is averred that the claim which is made by the workman in respect of the wages compensation, Provident Fund, Gratuity and Bonus are without merit and they are liable to be rejected.

9. The workman filed rejoinder at Exhibit-12 He reiterated the contention taken by him in the Statement of Claim. He denied the contentions taken by the management which are contrary to his claim. It is averred that the worker was a dock worker as defined under the Dock Workers Regulation of Employment Act of 1948 and he is entitled to all the benefits as per the employee of Port and Dock Workers in the major port under the machinery of the wage Boards etc. as observed by any different rulings. It is submitted that the employer was paying wages, allowances, bonus etc. in terms of Memorandum of Understanding dtd. 31-10-89 which forms part of service conditions of the workman. He reduced the amount arbitrarily which is illegal. It is submitted that the management gave benefits of this settlement to the workman till September '91 and thereafter freezed the wages and other benefits It is asserted that he is entitled to the claim.

10. The issues are framed at Exhibit-13. The issues and my findings there on are as follows :—

	Issues	Findings
1	Whether the reference is tenable?	Yes
2.	Whether the reference suffers from laches?	No.
3.	Whether the Memorandum of understanding dated 31-10-89 is not binding on the Company?	It is binding
4	Whether the demand of the B.P.T. Employees Union for payment of legal dues to Shri S. M. Sabnis, Dock Superintendent by M/s. Indian Maritime Enterprises Pvt Ltd as contained in the letters annexed is legal and justified?	The demand is legal and justified to the tune of Rs 92,333.45
5.	If so, to what relief the workman is entitled to?	As per order below.

REASONS :

11. At the outset it must be mentioned here that in a letter annexed to the terms of reference dtd. 14-9-94 states that the wokman is entitled to Rs. 2,99,847.90ps. from the management. In a satement of claim this amount is reduced to Rs. 2,80,452.77ps. It can be further seen that Sitaram Sabnis (Exhibit-14) in his evidence has further reduced this amount to Rs. 2,27,263.78ps Mr. Sawant, the Learned Advocate for the workman submitted that what is stated in the affidavit is correct and the figures which are arrived at are meticulously calculated. On the other hand it is tried to suggest by the management that no exactness is there in respect of the claim which is unjust. Eventhough there are different claims at different stages it is to be ascertained now what is exactly due to the workman as the legal dues or that he is not entitled to any dues as claimed.

12. It is not in dispute that Sabnis filed a Writ Petition No. 409 of 1997 in the High Court of Judicature at Bombay as the dispute raised by him was not send for adjudication. Their Lordships in their order at page. 2 had observed that "dispute raised by the petitioner is neither frivilous nor belated. It can also not be said that inexpedient to refers the dispute". In view of these observations it is rightly argued on behalf of the workman that the reference is tanable and it does not suffers from laches.

13. Sabnis (Exhibit-14) affirms that memorandum of Understanding dtd. 31-10-89 (Exhibit-8/1) was entered into between the management and Indian Maritime Enterprises Pvt. Ltd., Bombay and their workmen represented through the B.P.T. Employees Union on 31-10-89. His claim is based on

the basis of the said MOU. Venkatachalam Ramnathan (Ex-24) in his cross-examination admits that he and Mr. Mani participated in the wage revision with the union in 1989. He also accepts that he had never raised any complaint to anybody contending that there was any coercion for signing the MOU. Therefore, it has to be said that there was no coercion and it was an understanding reached between the parties. He also accepts that there was no coercion. He affirms that on the basis of the MOU dtd. 31st October '89 the dues were paid to the employees. He affirms that the MOU might be on the structure of the settlement of Port and Dock Workers, but, he is not sure about the same. Therefore, it is very clear that the MOU dtd. 31-10-89 (Ex 8/1) is applicable to the concerned parties.

14. Clause 9 of the MOU reads "the wages will be revised in terms of the settlement on wage revision of Port and Dock Workers". Mr. Sawant, the Learned Advocate for the workman submitted that it is open ended settlement in other words there is no end of this settlement and the wage revisions which are made applicable to the employees of Port and Dock Workers will be automatically made applicable to the workmen concerned or the other employees in the organisation.

15. Sabnis affirms that he received the wages and allowances as per the settlement till September '91. Thereafter, the wages and allowances were freezed. The said settlement was appears to be arrived at on the basis of the settlement dtd. 12th June'89 It is argued on behalf of the workman that the said settlement was revised on 6th December '94 which was effective from 1-1-93.

16. On the basis of clause-9 it is tried to argue on behalf of the management that there is no new settlement between the parties as per the wage revision of Port and Dock workers and unless it is so done the workman is not entitled to any benefits. It is also suggested to the workman in the cross examination that his claim is based on non existing right. I do not find any merit in it. After perusal of clause-9 it is very clear that as per the revision of wages in the Port and Dock workers these employees will get the benefits. Infact the workman was getting the benefit as per the wages and allowances to the employees of Port and Dock workers till September '91. Sabnis affirms that he is entitled to wages and allowances to the tune of Rs. 48,675.45ps as shown by him in Annexure-A to his affidavit. I do not find any incorrectness in these calculations. I allow this claim.

17. Sabnis affirms that he is entitled to bonus of 2½ months as per clause-5 of the said settlement. As the settlement is applicable he is entitled to the same. He affirm that he had calculated the due amount as shown in Annexure-B. After perusal of the annexure it reveals that he had shown due and dran statement in respect of the bonus and he claims Rs. 12,179.32ps towards bonus. He is entitled to the same.

18. Sabnis affirmed that he entitled to encashment of leave. Clause-6 of the said settlement states that following issues will be discussed in due course for amicable settlement. Sub-clause-6 deals with encashment of leave. In other words so far as the encashment of leave is concerned there was no discussion and it was never agreed between the parties that they are entitled to encashment of leave. It can be further seen that eventhough Sabnis claims of encashment of 240 days of leave it is affirmed by Ramanathan that there was no credit of 240 days of leave to Sabnis. He had produce the record (Ex-20/3). It is not of only of workmens record but of all other employees also. The workman was also informed by letter (Exhibit-20/4) dtd. 19-6-94 that there is no leave to his credit. Under such circumstances I find that the workman is not entitled to encashment of the account of leave.

19. Sabnis affirms that he was entitled to receive amount of gratuity to the tune of Rs. 1,01,133.68ps whereas the employer paid him Rs. 69,655/-. He affirmed that therefore he is entitled to Rs. 31,478.68ps as gratuity. As against that Ramnathan (Ex.-24) affirms that the gratuity amount claimed by the workman is incorrect. His last drawn salary was Rs. 4,327.50ps and not Rs. 4,421.60ps. This basic difference is there only because applicability of Memorandum dtd. 31-10-89 and subsequent applications. I, therefore, find that the calculation which is carried out by the management are on the wrong footing. I, therefore, find that the claim which is made by the workman towards gratuity to the tune of Rs. 31,468.68ps. is proper.

20. Sabnis affirms that he is entitled to continue in the service till December '98. That is upto age of 68 years. This contention is without any merit. The management had addressed him a notice dtd. 27-6-94 (Exhibit-20/4) whereby he was informed that his service is terminated w.e.f. 31-7-94. He was given one months notice and at the time of retirement he had already crossed 58 years. The claim which is made by him is unrealistic and without any basis.

21. Sabnis affirmed that he is entitled to Rs. 500/- as medical allowance per accounting year. The management paid him Rs. 125/-. He had claimed Rs. 375/- as its balance. He was retired by the end of July'94. In other words in the accounting year of 1994 there were only three months for payment of medical allowance. Approximately Rs. 41/- and some odd paise are to be paid per month as the medical allowance. It is therefore the amount of Rs. 125/- which was paid by the management towards medical allowance is perfectly legal and proper. He is not entitled to any amount under that head.

22. Sabnis did not claim any Provident Fund amount in this reference. At this moment I must refer to the settlement Statement of Sabnis dtd. 30th July '94 (Exhibit-20/5). From perusal of this statement it is very clear that the management paid him gratuity, bonus and prorata medical allowance. Therefore, the contention of the management that the workman is not entitled to bonus amount or that of gratuity amount is without any merit.

23. It is tried to argue on behalf of the management that the court cannot go out side the scope of the reference and decided whether Sabnis is a dock worker or not and he is entitled to receive wages on its basis I find that the argument is without any basis and it has to be simply rejected.

24. Sabnis affirmed that he is entitled to the due amount with 18% interest on it. In a letter which was send alongwith the order of reference there is no particular amount of interest is mentioned But normally when such due amount is there 6% interest per annum is granted. Here it can be also seen that the union had made representations to the management asking them to pay the amount which was not paid. Under such circumstances workman is entitled to 6% interest p.a. on the due amount from the date of his retirement till its payment.

25. For all these reasons I record my findings on the issues accordingly and pass the following order :—

ORDER

1. The demand of the Bombay Port Trust Employees Union for payment of legal dues of Shri S. M. Sabnis, Docks Superintendent by M/s. Indian Maritime Enterprises Pvt. Ltd. towards wages Rs. 48,675.45ps. (Rupees Forty Eight Thousand Six Hundred Seventy Five and paise Forty Five only), towards bonus Rs. 12,179.32ps (Rupees Twelve Thousand One Hundred Seventy Nine and paise Thirty two *only*) and towards gratuity Rs 31,478.68ps (Rupees Thirty one thousand four hundred seventy eight and paise sixty eight only) is legal and justified.

2. So far as the other claim is concerned it is illegal and unjustified.

3 The management is directed to make the above said payment to Sabnis with 6% interest per annum on it from 1-8-94 i e date of retirement of the workman, till its payment

S. B PANSE, Presiding Officer

नई दिल्ली, 26 मई, 1999

का. आ. 1714. —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता डॉक लेबर बोर्ड का प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-05-1999 को प्राप्त हुआ था।

[सं. एल-32011/9/92-आई. आर. (विविध)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 26th May, 1999

S.O. 1714.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Calcutta Dock Labour Board and their workman, which was received by the Central Government on 26-05-1999

[No. L-32011/9/92-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 31 of 1993

Parties: Employers in relation to the management of Calcutta Dock Labour Board

AND

Their Workmen.

PRESENT :

Mr. Justice A. K. Chakravarty—Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. B. K. Chakraborty, Industrial Relations Officer.

On behalf of workmen : Mr A Banerjee, General Secretary of the Union

State : West Bengal Industry : Port & Dock.

AWARD

By Order No L-32011/9/92-IR(Misc) dated 9th June, 1993 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication.

> "Whether the action of the management of Calcutta Dock Labour Board vide their letter No. S-A/6(b) pt.-II dated 23-9-1991 imposing punishment of reversion to the next lower post in terms of clause-6(iv) of the Board's SSR-8 against Shri Mohammed Mukhtar, LDC deputed to C.P.T. is justified. If not, to what relief the workman is entitled to?"

2 The instant dispute has arisen at the instance of the Calcutta Port & Dock Industrial Workmen Union (in short the union) for imposition of punishment of reversion upon Shri Mohammed Mukhtar, LDC deputed to CPT was justified by the management of the Calcutta Dock Labour Board (in short, the CDLB).

3. Union's case, in short, is that the concerned workman Md. Mukhtar joined the service of the CDLB on 29-11-1973. His service was governed by the Service Rules and Supplementary Service rules For administrative reason the services of the concerned workman were placed on deputation under the Calcutta Port Trust (in short the CPT) by order dated 6-1-1984 issued by the Deputy Chairman, CDLB with a direction to report to the General Manager, Ship Repair Complex, CPT on 9-1-1984. It was stated in that order of deputation that his service condition will not be changed in

any case. It was further stated if the deputationist felt that his service condition has changed or he has any other problem the Chairman upon hearing the grievance of the deputationist, take step to remove such difficulty. In terms of the aforesaid order the concerned workman reported for duty to the General Manager, Ship Repair Complex on 9-1-1984. He was thereafter transferred to the C M E.'s Deptt. of the CPT by an order dated 31-1-1984 with allocation of duties from 7.30 A.M. to 4.30 P.M. Md. Mukhtar preferred applications dated 16-7-1984, 9-1-1988 and 17-3-1988 objecting against change in the service condition due to change of duty hours. The CPT authorities got furious at such representations and placed him under suspension on 23-3-1988 on take charges as made out in the chargesheet issued against him dated 9-6-1988. Upon denial of the charges by the concerned workman, Shri I. Mukherjee, Safety Officer was appointed as an Enquiry Officer to enquire into the charges on 29-9-1988. Though the enquiry was conducted on 2-5-1991, 29-5-1991, 31-5-1991 and 1-6-1991, save and except 31-5-1991 it was held at the back of the concerned workman and it was also concluded without any intimation to him. No reasonable opportunity was also provided to him to defend his case in the enquiry proceeding. The enquiry proceeding was completed by submission of report by the Enquiry Officer on 19-6-1991 finding him guilty of the charges. A show cause notice was thereafter issued on 19-8-1991 by the Deputy Chairman, CDLB as to why reversion to the next lower post shall not be imposed upon him as a major punishment. He replied to the show cause notice on 23-8-1991 and the Administrative Body being not satisfied with the reply passed the final order of punishment of reversion to the next lower post in terms of Clause 6(4) of the CDLB's Supplementary Service Rules-8. He preferred an appeal against the order of punishment to the Chairman, CDLB which was rejected. The suspension order was thereafter withdrawn and he was directed to report for duty. The union thereafter raised the industrial dispute before the Assistant Labour Commissioner(C), Calcutta and the conciliation proceeding having ended in failure, the matter was referred to the Central Government which in its turn referred the matter to this Tribunal for adjudication. The union has accordingly prayed for quashing the order of punishment imposed upon the concerned workman by the disciplinary authority.

4. The management of CDLB filed a written statement in reply to the written statement of the union alleging, inter alia, that the concerned workman was placed on deputation under the CPT on 6-1-1984 and was directed to report for duty to the General Manager, Ship Repair Complex of the CPT on 9-1-1984. He joined the CPT as directed and was working there. On 22-3-88 the concerned workman was chargesheeted for some grave misconduct. The charges were that Md. Mukhtar a Clerk under S S.W., North Workshop, refused to carry out the order to report to the Establishment Officer on 8-3-1988 and 9-3-1988. On 10-3-1988 he was directed by the SSW, North Workshop not to sign the attendance register at North Workshop but to report to the Establishment Officer. Since he was directed to report to the Establishment Officer, he became furious and assaulted the Senior Shipwright, North Workshop, Shri R. Mazumdar physically causing injury to him and making him unfit for work. Concerned workman replied to the chargesheet denying the charges. The management being not satisfied with such reply, instituted a domestic enquiry, which was held in consonance with the principles of natural justice. The Enquiry Officer returned a verdict of guilty in respect of both the charges levelled against him. The concerned workman being on deputation, the borrowing authority, namely, CPT as per provisions of Regulation 13 of CPT Employees (C.C. & A.) Regulations, 1987 transmitted all documents and papers pertaining to the enquiry to the Deputy Chairman, CDLB and who is the disciplinary authority, for suitable action. The Deputy Chairman proposed the punishment of reversion to the next lower post and taking all relevant considerations into account inflicted the punishment of reversion to the next lower post upon the concerned workman. The management of the CDLB has alleged that the enquiry proceeding having been held upon compliance of the principles of natural justice allowing all reasonable opportunity to the concerned workmen to defend himself and the punishment being based on such enquiry proceeding, there is no fault in the same. It was also alleged that the event of any finding of this Tribunal that the enquiry proceeding is defective, the management should get an opportunity to substantiate the charges against the workman by adducing fresh evidence.

5. The union also filed a rejoinder reiterating its allegations as made by it in the written statement.

6. Apart from production of certain documents, each party has examined one witness each.

7. Heard submissions of Mr. A. Banerjee and Mr. B. K. Chakraborty the representatives of the union and the management respectively.

8. Mr. Banerjee, representative of the union challenged the order of imposition of punishment upon the concerned workman on two grounds, namely, that the findings of the Enquiry Officer upon which the punishment was based is vitiated for non-compliance of the principles of natural justice and the final order of punishment passed by the disciplinary authority was not free from bias.

9. It appears from the evidence of the Enquiry Officer, Indrajit Mukherjee that the enquiry was held on four days, namely, 2-5-1991, 31-5-1991, 1-6-1991 and 29-6-1991, that is confirmed by the enquiry proceeding itself. What, however, is not confirmed in the enquiry proceeding is the statement that he issued notices upon the concerned workman intimating the dates of the enquiry proceeding before the same was held and he allowed him opportunity to cross-examine the witness of the management. As matter of fact, it appears from enquiry proceeding that save and except 31-5-1991, the workman did not take part in the proceeding on other dates. The participation of the workman in the enquiry proceeding on

31-5-1991 indicates that he was intimated about that date earlier. There is nothing in the enquiry proceeding to show that any intimation was given to the concerned workman in respect of other dates on which enquiry was held, as a result the concerned workman had no opportunity to cross-examine the witnesses of the management in the enquiry proceeding. It further appears that the concerned workman was not given any opportunity to defend himself in the enquiry. He cited the name of one witness on 31-5-1991 whom he wished to examine on his behalf. The Enquiry Officer did not afford him that opportunity and in justification of his aforesaid action, he stated that she was neither produced as a witness nor she was an employee of the CPT. It is no doubt true that it is for the workman to produce his witness. Instead of directing the workman to do so, it was not the business of the Enquiry Officer to search for such witness and to record that no such witness was found. Be that as it may, there being nothing in the enquiry proceeding in support of his statement that prior notices were served upon the concerned workman intimating the dates of the enquiry, the conclusion is inescapable that such intimation was never made. The workman thus was not allowed to defend himself by cross-examination of the management's witnesses and also by examination of his own witness. There being thus the grossest violation of the principles of natural justice in holding the enquiry, it is liable to be set aside. The enquiry proceeding thus suffers also from procedural unfairness and the report of the Enquiry Officer being based on such experte evidence of the witnesses of the management, it is also liable to be set aside.

10. Mr. Banerjee's second contention that the order of the disciplinary authority suffers from bias on the ground that the CPT while transmitting the records suggested the quantum of punishment to be imposed upon the concerned workman. Mr. Chakraborty, representative of the management submitted that since the borrowing authority had no power to impose major penalty, the matter was referred to the CDLB in terms of Regulation 13(2)(ii) of the CPT Employees' (C.C. & A.) Regulations, 1987 which runs as follows : "If the Disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 7 should be imposed on him, it shall replace the services at the disposal of the Lending authority and transmit to it the proceedings of the enquiry for such action as it deems necessary." Penalty of reversion to a lower post which was imposed upon the concerned workman is no doubt a major punishment, but the disciplinary authority of the CPT which was not competent to award punishment should not have suggested the exact punishment to be imposed upon him. It ought to have simply transmitted the records merely mentioning its incompetence to pass any order of major punishment in view of the facts and circumstances of the case. Instead of doing the same, suggestion of any particular punishment to be imposed upon the concerned workman while transmitting the records introduced an elements of bias which no doubt had its influence on the Administrative body which finally passed the order of punishment. The order of punishment must accordingly be held to be bad for that reason.

11. The illegality of the order of reversion to the next lower post shall also be apparent if the show cause notice, Ext. W-12 is taken into consideration. It will appear from this show cause notice that he was directed to show cause as to why the concerned workman should not be reverted to the next lower post as suggested and proposed by the CPT. It is necessary that the punishing authority must form it is own opinion about the punishment to be awarded upon the delinquent upon consideration of the facts and circumstances and evidence on record in the matter. The show cause notice shows that the Deputy Chairman of the CDLB had not formed any independent opinion upon consideration of the materials on record as to the nature of the punishment to be inflicted upon the workman. For this purpose he relied on consideration of the CPT. The second show cause notice must be accordingly held to be bad for that reason and the punishment order having been made on the basis of such illegal and invalid suggestion of the CPT which was not all germane for consideration must also be bad on that account.

12. From the facts and circumstances, evidence on record, as well as the position of law in this matter, as shown above by me, it is clear that the enquiry proceeding as well as the final order of punishment are both liable to be set aside.

13. It appears from the written statement of the management that there is a prayer for allowing it an opportunity to prove its case afresh by examining independent witnesses before this Tribunal to prove the charges levelled against the workman, if the domestic enquiry is held to be invalid. It is not possible to allow any fresh chance to the management to prove its case afresh in view of the fact that apart from finding the enquiry proceeding defective, there is also finding to the effect that the order of the Administrative Body of the CDLB suffers not only from bias but also for the reason stated above. No question of giving any fresh chance to the management to prove its case afresh by examination of independent witnesses accordingly can arise.

14. In view of what goes above, the order of the Calcutta Dock Labour Board in their letter No. S-A/6(b)Pt-II dated 29-3-1991 imposing punishment of reversion to the next lower post in terms of clause-6(iv) of the Board's SSR-8 against the concerned workman Mohammed Mukhtar, LDC deputed to CPT cannot be said to be justified. The order of punishment is accordingly set aside and the CDLB is directed to restore the concerned workman to his original post of LDC. The CDLB shall also be liable to pay him all the difference of pay and allowance due to him consequent upon his reversion to the next lower post.

This is my award.

A. K. CHAKRAVARTY, Presiding Officer

Calcutta, the 17th May, 1999.

नई दिल्ली, 26 मई, 1999

का.आ. 1715.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-1999 को प्राप्त हुआ था ।

[सं. एल.-32012/3/89-आई.आर.(विविध)]

बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 26th May, 1999

S.O. 1715.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Port Trust and their workmen, which was received by the Central Government on 26-5-99.

[No. L-32012/3/89-IR (Misc)]

B.M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 18 of 1989

Parties : Employers in relation to the management of Calcutta Port Trust, Calcutta

AND

Their Workmen.

Present :

Mr. Justice A.K. Chakravarty
Presiding Officer

Appearance :

On behalf of Management—Mr. G. Mukhopadhyay, Senior Labour Officer (IR).

On behalf of Workmen—Mr. A.K. Bandopadhyay, Joint Secretary of the Union.

State : West Bengal.

Industry : Port & Dock.

AWARD

By Order No L-32012/3/89-IR(Misc.) dated 31 May, 1989 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Calcutta Port Trust, Calcutta in removing from service Shri Ashim Kumar Das, Shed Clerk, Grade II, Item No. 459/IOF attached to Traffic Department from 26-4-1985 is justified If not, what relief is Shri Ashim Kumar Das entitled to?"

2. Instant reference has arisen at the instance of Calcutta Port & Shore Mazdoor Union (in short, the union) against the action of the management of Calcutta Port Trust (in short, the management) in removing the concerned workman, Ashim Kumar Das, an employee of the management, from its service.

3. Union's case may be briefly stated as follows : Concerned workman was working as Shed Clerk, Grade-II, Item No. 459/IOF attached to the Traffic Department of the Calcutta Port Trust from December, 1965. M.V. Solan 'P', a ship, arrived at 4 NSD berth of Calcutta Port Trust on 31-5-1983 for taking a consignment of export cargo of 60,000 bags of sugar for the port of Sudan and those bags started coming to 4 NSD berth for the purpose of shipment on board the ship from 27-5-1983 and the concerned workman Shri Das was deputed to work as a Shed Checker for the said export consignment. The required quantity of 60,000 bags of sugar were brought into the shed for the purpose of shipment and further 640 bags of sugar were brought to replace the sugar bags which might have been torn/damaged in course of handling for shipment. The shipment of bags of sugar was completed on 8-6-1983. As the Shed Checker is responsible for maintaining of cargo accounts of export cargo shipped on board, Shri Das was asked to prepare a tally (accountal) of the bags of sugar lying in the shed and he prepared the tally of 600 intact bags and also of sweepings. Shri Das prepared two retallies, one for 640 intact bags of sugar and 1542 bags of sugar sweepings as lying in the shed. On 24-6-1983, Superintendent, NSD asked for explanation from Shri Das regarding short-shipment of 1806 bags of sugar aboard MV Solan-'P'. Pending departmental enquiry, Shri Das was suspended with effect from 9th July, 1983. A criminal case was started against him along with others. Shri Das was thereafter charged with a memorandum of charges on 29-7-1983. The charge was received on 19-8-1983. On 3-9-1983 Shri Das made his submission denying the charges. On 19-10-1983 Shri Das received a communication from the Docks Manager from which he came to know that the proposed departmental enquiry was contemplated against 5 employees, 3 of whom were placed under suspension. On 14-11-1983 Shri Das made a representation to the Chairman of

the Calcutta Port Trust (CPT in short) that he likes to be assisted by Shri Jotsnamoy Chatterjee, A.S.F., 'D' Shed, NSD under Traffic Department for defending his case. The criminal case ended in discharge of Shri Das from the said case and he having applied for vacation of the order of suspension after his discharge from the criminal case, his suspension was vacated from 11-7-1984. The departmental proceeding, however, continued. On 5-1-1985 a show cause notice was issued upon Shri Das by the Chairman of the CPT directing him to show cause why the penalty of removal from service should not be passed against him. Shri Das made a representation on 8-2-1985 which was rejected and the Chairman finally issued the order No. CUO/38/6/Con.35 dated 26-4-1985 by which Shri Das was removed from the Trustee's service. Shri Das preferred an appeal against that order before the Central Govt., which dismissed his appeal on 23-3-1985. A further representation was made before the Central Government to reconsider the matter as it was not a case of theft for dismisal from service as stated in its order. The Central Government issued a corrigendum.

Having felt that justice was denied to Shri Das and he is being victimised and he also being used as a scapegoat for protecting the really guilty persons that the union raised an industrial dispute before the Assistant Labour Commissioner (Central), Calcutta and it ended in failure. The matter was then referred to the Central Government, which referred the matter to this Tribunal for adjudication

The union has challenged the holding of the joint enquiry and alleged that the procedure followed in the said enquiry was not proper. It is also alleged that the principles of natural justice was not followed in conducting the enquiry. It is also alleged that the punishment of dismissal from service as highly disproportionate to the gravity of the offence alleged to have been committed by the concerned workman. The union has accordinlgy prayed for setting aside the order of removal of the concerned workman and his reinstatement in service with consequential reliefs.

4 The management in its written statement has alleged that the concerned workman was charged for committing misconduct and he was served with a charge-sheet memorandum by the Chairman of the CPT being the disciplinary authority under his letter dated 29-7-1983 Charges lavelled against Shri Das are as follows :

CHARGE-I

That the said Shri Ashim Kumar Das is charged with misconduct in as much as while functioning as Shed Checker, 4 NSD a/c m.v Solange P on 9th June, 1983 he submitted a retally of bags sugar showing them as 'sweepings' and thereby aided and abetted M/s. Tarapada Suhasini Marine Contractors (Pvt.) Ltd. in attempting to remove 1542 original bags of sugar as bags 'sweepings'.

CHARGE-II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Ashim Kumar Das by showing bags sugar as 'sweepings' enabled M/s Tarapada Suhasini Marine Contractors (Pvt.) Ltd. to obtain Mates Receipt for the full engagement quantity, when actually a large number of original bags had been short shipped and were lying in the shed

CHARGE-III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Ashim Kumar Das by showing the bags as 'sweeping' helped M/s. Tarapada Suhashini Marine Contractors (Pvt.) Ltd. in their attempt to deprive the Trustees of their legitimate dues.

The facts which led to the framing of the charges have been disclosed earlier in the written statement of the union. The concerned workman submitted reply to the memorandum of charges dated 3-9-1983 denying the charges. Shri A. Chakraborty the then Superintendent Transportation and Shri K Sengupta the then Deputy Docks Manager, Traffic were appointed as the Enquiry Officer and the Presenting Officer respectively to enquire into the charges. The Enquiry Officer submitted his finding on 21-4-1984 after due enquiry wherein Shri Das was found guilty of the charges levelled against him. The Chairman being the disciplinary authority agreed with the findings of the Enquiry Officer and proposed the punishment of removal of Shri Das from the service of the management. A show cause notice was issued upon Shri Das as to why the penalty as in the nature of removal from service should not be imposed upon him. Shri Das replied to the said show cause notice by his letter dated 8-2-1985. Being dissatisfied with such reply of Shri Das the Chairman of the CPT passed the order to remove Shri Das from its service with immediate effect i.e. from 26-4-1985. He was, however, given one month's pay in lieu of notice. Shri Das preferred an appeal against the said order of removal before the Central Government which dismissed his appeal on 23-3-1985 A further representation was made before the Central Government to reconsider the matter as it was not a case of theft for removal from service as stated in its order. The Central Government issued a corrigendum. The management has also alleged that the punishment awarded against the concerned workman was proper and in proportion to the gravity of the offence committed by the concerned workman. The management has accordingly prayed for dismissal of the case of the union.

5. Written statement of the management was followed by a rejoinder of the union wherein it is alleged that Shri Das prayed for supply of the copies of the documents and evidence upon which allegations against him were sought to be proved, but they were not supplied and he was thus denied the minimum opportunity to defend his case. It is also alleged that Rule 13(2)(f) of the Calcutta Port Commissioners

Employees (Discipline and Appeal) Rules, 1964 were not complied with as the Chairman was not authorised to pass any order against a Class-I Officer who was also a delinquent. It is also alleged that the ship having declared the receipt of 60,000 bags of sugar as per engagement of 8-6-1983 and issued the Mates Receipt on the morning of 9-6-1983, the Assistant Superintendent pressed the concerned workman hard for retally of the bags lying in the shed for shipment. Consequent upon the fact that M V Solan-P declared that they have received the full engagement of 60,000 bags of sugar on the night of 8-6-1983 and M/s. Tarapada Suhasini Marine Contractors (Pvt.) Ltd. brought only 60,000 bags of sugar and another 640 bags of sugar for replacement of torn/damaged bags, Shri Das submitted a retally on approximation wherein he declared 1542 bags of sugar as sweeping and 640 original bags to be lying which were brought for replacement of the torn/damaged bags. It is further alleged that on 10-6-1983 before the Mates Receipt was delivered to the parties and any attempt was made for taking the bags lying in the shed, Shri Das brought to the notice of the superior about the existence of shipping mark on the bags after the bags were restacked in the afternoon on 9-6-1983, and as such, if there is any attempt to take the delivery of the bags as sweeping resulting loss of revenue to the port on 10-6-1983, it was at the instance of the higher officials. The enquiry proceeding was also challenged as vindictive and findings of the Enquiry Officer was challenged as perverse alleging that the Enquiry Officer failed to assess evidence. It is further alleged that the Enquiry Officer failed to appreciate the evidence and the workman was being made a scapegoat as he failed to consider the implication of the fact that the Mate Receipt of 60,000 bags of sugar were issued even after his information of wrong tallying to the Assistant Superintendent.

6. The matter of legality and validity of the domestic enquiry came up for consideration before this Tribunal and this Tribunal by its order dated 2-12-1998 held as follows : "It is thus clearly proved from the above facts that the concerned workman was totally negligent in performance of his duty as Shed Checker. I find from the enquiry report that the Enquiry Officer has considered the matter from all possible angle and his findings are based on the materials on record. I accordingly do not find any reason for interfering with the conclusion of the Enquiry Officer that the concerned workman was guilty of the charges levelled against him. I am accordingly to hold that the enquiry proceeding is legal and valid." After the above finding in respect of the domestic enquiry, the matter is now being heard on the question of quantum of punishment imposed upon the concerned workman.

7. Heard submissions of Mr. Asit Bandopadhyay, representative of the union and Mr. Gautam Mukhopadhyay, representative of the management.

8. The hearing about the quantum of punishment being considered pursuant to the provisions of section 11-A of the Industrial Disputes Act, 1947, there is no scope for any further oral evidence in the matter and this Tribunal is called upon to decide the question about the justification of the punishment imposed upon the concerned workman upon the materials on record.

9. Mr. Bandopadhyay, representative of the union challenged the orders of both the disciplinary authority and the appellate authority. He challenged the order of the disciplinary authority on the ground that he was not justified in holding the connivance between M/s. Tarapada Suhasini, Marine Contractor (Pvt.) Ltd. and the concerned workman in attempting to remove the 1542 original bags of sugar as bags of sweepings. He also submitted that the disciplinary authority ought not to have come to such a finding disagreeing with the findings of the Enquiry Officer denying the the concerned workman any opportunity of being heard in the matter. It is an established principle of law that the disciplinary authority can make his own findings disagreeing with the findings of the Enquiry Officer, but if any such finding affects the workman prejudicially, natural justice demands that he should get a hearing in the matter. In the instant case, the question is whether there was any independent finding by the disciplinary authority in the matter. It is true that the Enquiry Officer has recorded that there is no evidence of connivance between M/s. Tarpada Suhasini Marine Contractor (Pvt.) Ltd. and the concerned workman. The workman was not charged for any act of connivance in the chargesheet. Charge No. 1 was whether by submitting a retally of bagged sugar showing them as sweeping the concerned workman had aided and abetted M/s. Tarapada Suhasini Marine Contractor (Pvt.) Ltd. in attempting to remove 1542 original bags of sugar as sweepings. Direct evidence is not always required in proving aiding and abetting. If the negligence of any party causes any other party to get some benefit not due to him aiding and abetting may be presumed. The findings of the disciplinary authority cannot thus be said to be departure from the findings of the Enquiry Officer as he found the concerned workman guilty of the three charges levelled against him. Even assuming that the disciplinary authority was not empowered to punish him for any charge of connivance, still then, the Enquiry Officer having found the other two charges proved, the punishment imposed by the disciplinary authority shall be justified on those counts.

10. The second ground of attack is the finding of the appellate authority, marked Ext. M-12. Mr. Bandopadhyay, representative of the union drew my attention to the relevant part of the order which runs as follows : "AND WHEREAS, the Central Government having considered the said appeal is of the view that the charges are based on facts and grounds of the appeal are not borne out of the records and that misconduct/abetment leading to the theft in the godown is a serious offence which fully justify the punishment." He submitted that there being no question of "misconduct/

abetment loading to the theft in the godown'' in this case, the order of the appellate authority cannot stand as there was no application of mind by the said authority. That order was subsequently amended by order dated 2nd June, 1988 by the said appellate authority by replacing the words 'dismissed' or 'dismissal' with the words 'removed' or 'removal'. On a plain reading of the appellate authority's order it will appear that the Central Government was of the view that the charges are based on the facts and the grounds of the appeal are not borne out from records. No fault can be found out in this part of the order. The other part that ''misconduct/abetment leading to the theft in the godown is serious offence which fully justified the punishment'' may admit criticism as it does not properly describe the offence committed by the workman. Upon careful consideration of the facts of the case I am of the opinion that it is not easy to describe the offence is a succinct manner. It appears that instead of the words ''leading to the theft in the godown'' it should have been leading to the attempted misappropriation of sugar in the godown. The words used by the appellate authority may not be satisfactory, but it is clear that the appellate authority applied its mind and considered the appeal, but in doing so used some expression which cannot be said to be proper. Theft and misappropriation are almost synonymous terms. Mr. Bandopadhyay cannot be allowed to make any capital out of this mistake as there is no ambiguity in the order that the appeal was rejected. There is also no evidence that the concerned workman was at all prejudiced by such order. In any case the order of the appellate authority cannot be set aside on that flimsy ground as it is clear that it has duly considered the appeal and approved the order of removal of the concerned workman from service. The order of punishment accordingly is not liable to be challenged on this ground.

11. Mr. Bandopadhyay, representative of the union submitted that the punishment inflicted upon the workman was disproportionate when compared with the gravity of the offence. He submitted that the concerned workman had been working there for 18 years and that there is scope of committing mistake in counting of bags at the time of their shipment. Mr. Bandopadhyay also pointed out that at best the offence committed by the concerned workman can be said to be mere negligence of duty and the Tribunal also having found that the negligence have been proved, extreme punishment of removal from service would be too harsh for the workman. Had this been a question of simple negligence and had the incident been occurred in respect of mistake in retallying small number of bags, the alleged negligence might have been considered to be an act of mere negligence. Further, from the evidence of the concered workman before the Enquiry Officer it will appear that he admitted that out of the 1542 bags some bags contained shipping mark. I fail to understand how can a person working for 18 years could have considered such shipping marked bags as sweepings. Then again, it appears from his evidence that he found machine stitched bags lying scattered in the godown. These machine stitched bags were obviously for shipment. He was also asked whether he made physical checking of the cargo handled by him and he admitted that he did it. It is not also understood that how an experienced Shed Checker of 18 years could have mistaken 1542 bags containing 154.2 metric tonnes of sugar as sweepings. Even though connivance between M/s. Tarapada Suhasini Marine Contractor (Pvt.) Ltd. and the concerned workman could not be proved, still then, it is difficult to believe that his retallying showing the shipment of the entire cargo is an act of mere negligence when 1542 machine stitched bags with shipping mark were lying scattered in the godown. The nature of such colossal negligence rather suggests its connection with another agency who was to be profitted directly as a result of such negligence. It should be remembered that the cost of such negligence was stated to be 8 to 10 lakhs of rupees in terms of the price of sugar in 1983. Even assuming that it was a case of negligence, still then, it is no fault of the employer to dismiss its servant from service if any action of such servant causes such huge loss to his employer. Employer cannot be made liable to sustain huge loss on account of fault or negligence on the part of its servant.

12. It is an established principle of law that the Tribunal should not ordinarily sit as an appeal court over the disciplinary authority unless it is found that the punishment is shockingly disproportionate to the gravity of the offence committed by the delinquent. Reference may be made to the case of C.M.C. Hospital Employees Union Vs. C.M.C. Vellore Association reported in (1987) 4 S.C.C. 691. In the aoresaid view of the matter the punishment of removal from service of the concerned workman in the facts and circumstances of this case does not appeal to me as shockingly disproportionate. I do not, therefore, find any reason to interfere with the order of the disciplinary authority in this matter.

13. So, upon consideration of the facts, circumstances, evidence on record as well as position of law in the matter, I am to hold that the management of Calcutta Port Trust was justified in removing the concerned workman from his service for the aforesaid offence. The workman accordingly shall not be entitled to any relief in this case.

This is my Award.

Dated, Calcutta the 12th May, 1999

A.K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 27 मई, 1999

का.आ.1716.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिटेंडेंट ऑफ पोस्ट, टोंक डिवीजन, टोंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99

को प्राप्त हुआ था।

[सं. एल-40012/62/94-आई आर(डी यू)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 27th May, 1999

S.O. 1716.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Supdt. of Post, Tank Division, Tank and their workman, which was received by the Central Government on 27-5-99.

[No. L-40012/62/94-IR(DU)]

B. M. DAVID, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय), कोटा

निर्देश प्रकरण क्रमांक : औद्य न्या. (केन्द्रीय) 9/95

दिनांक स्थापित :—12/5/95

प्रसंग :—भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल. 40012/62/94आई. आर. (विविध) दिनांक 4/5/95

औद्योगिक विवाद अधिनियम, 1947

मध्य

कैलाशचंद्र पुत्र श्री भंवर लाल निवासी बसौली तह. हिण्डोली जिला बूंदी द्वारा जनरल सैक्रेट्री, जनरल मजदूर यूनियन, बूंदी

—प्रार्थी श्रमिक

एवं

अधीक्षक, डाकघर डिवीजन, टोंक (राजस्थान)

—प्रतिपक्षी नियो.

उपस्थित

श्री जगदीश प्रसाद शर्मा,

आर.एच. जे. एस.

प्रार्थी श्रमिक की ओर से प्रतिनिधि :—श्री आर एस. शर्मा,

प्रतिपक्षी नियोजक की ओर से प्रतिनिधि :—श्री सी. बी. सोरल

अधिनिर्णय दिनांक :—30-4-99

: अधिनिर्णय :

भारत सरकार, श्रम विभाग द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरांत "अधिनियम" से संबोधित किया जायेगा) की धारा 10 (1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ संप्रेषित किया गया है :—

"Whether the action of the Supdt. of Post Tank Division Tank in terminating the services of Shri Kailash Chandra S/o Shri Bhavaer Lal Postman w.e.f. 18-4-93 is proper, legal and justified ? If not to what relief the workman is entitled to ?"

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी। प्रार्थी श्रमिक श्री कैलाश चन्द्र की ओर से क्लेम स्टेटमेंट प्रस्तुत कर संक्षेप में यह अंकित किया गया कि प्रार्थी श्रमिक द्वारा प्रतिपक्षी, अधीक्षक डाक विभाग, टोंक मंडल, टोंक (राजस्थान; जिसे तदुपरांत "प्रतिपक्षी नियोजक" से संबोधित किया जावेगा) के यहां नियोजन में दिनांक 1-2-92 से पोस्ट बसौली तहसील हिंडोली, जिला बूंदी पोस्ट ऑफिस में डाकपाल के पद पर नियोजित होकर दि. 18/4/93 तक निरंतर कार्य कर, उक्त नियोजन काल में हर बारह कलैण्डर माह में 240 दिवस से अधिक अवधि तक सेवा कार्य पूर्णकर लिया गया था तब प्रतिपक्षी नियोजक द्वारा प्रार्थी श्रमिक को दि. 18/4/93 के बाद से अकारण ही, बिना वरिष्ठता सूची का प्रकाशन किये बिना एक माह का नोटिस अथवा नोटिस वेतन दिये, अनुचित एवं अवैध प्रकार से सेवा से पृथक कर दिया और प्रार्थी श्रमिक के स्थान पर अन्य श्रमिक को सेवा पर नियोजित कर लिया जो प्रार्थी श्रमिक तत्पश्चात् से ही वर्तमान तक बेरोजगार रहा है जब श्रमिक अधिनियम के अधीन प्रतिपक्षी नियोजक के यहां नियोजन में सेवा की निरंतरता के साथ, पिछले संपूर्ण वेतन व अन्य समस्त परिलाभों सहित पुनः सेवा पर बहाल करवाये जाने का अधिकारी रहा है। अतः प्रार्थी श्रमिक का प्रस्तुत क्लेम सव्यय स्वीकार किया जावे।

3. प्रतिपक्षी नियोजक की ओर से जवाब क्लेम प्रस्तुत कर प्रार्थी श्रमिक को उक्त क्लेम को अस्वीकार किया गया है तथा प्रतिवाद स्वरूप संक्षेप में यह अंकित किया गया है कि प्रतिपक्षी नियोजक द्वारा प्रार्थी श्रमिक को एक्स्ट्रा डिपार्टमेंटल कर्मचारी के रूप में शाखा डाकपाल बसोली के पद पर दिनांक 1-2-92 से प्रोविजनल रूप से नियुक्त किया गया था जिसे दिनांक 17-4-93 से अपराह्न से उक्त पद के उसके उक्त चयन को रद्द करते हुए इस आधार पर हटा दिया गया कि प्रार्थी श्रमिक उक्त पद की रही एक अनिवार्य योग्यता, स्थायी संपत्ति धारक नहीं रहा था। प्रार्थी श्रमिक की सेवा अवधि तीन वर्ष से कम रही थी, तब नियमानुसार उसे एक माह का नोटिस दिया जाना भी आवश्यक नहीं रहा था। आगे यह भी अंकित किया है कि डाक विभाग अधिनियम के अधीन परिभाषित एक "उद्योग" नहीं रहा है तब अधिनियम के प्रावधान प्रतिपक्षी विभाग पर प्रभावी नहीं होते हैं। आगे यह भी अंकित किया है डाक विभाग के एक्स्ट्रा डिपार्टमेंटल कर्मचारी अधिनियम के प्रावधानों के अंतर्गत वर्कमेन की श्रेणी में नहीं आता है। आगे यह भी अंकित किया है कि प्रार्थी श्रमिक द्वारा प्रस्तुत किया गया उक्त विवाद औद्योगिक विवाद की श्रेणी में नहीं आता है अतः इस न्यायाधिकरण को उक्त विवाद का श्रवणाधिकार नहीं है अतः प्रार्थी श्रमिक का प्रस्तुत क्लेम निरस्त किया जावेगा।

4. प्रार्थी श्रमिक की ओर से साक्ष्य में स्वंय प्रार्थी कैलाश चन्द्र का शपथ-पत्र प्रस्तुत किया गया है जिस पर प्रतिनिधि प्रतिपक्षी द्वारा प्रतिपरीक्षा की गई है। प्रलेखीय साक्ष्य में समझौता अधिकारी के यहां की गयी कार्यवाही, नियुक्ति पत्र एवं नौकरी से हटाने के आदेश प्रलेख प्रदेश डब्ल्यू.1 लगायत 3 तक प्रस्तुत कर प्रदर्शित करवाए हैं।

5. प्रतिपक्षी नियोजक की ओर से साक्ष्य में साक्षी श्री पूसाराम शर्मा अधीक्षक, डाकघर, टोंक, टोंक मंडल टोंक का शपथ-पत्र प्रस्तुत किया गया है जिस पर प्रतिनिधि प्रार्थी द्वारा प्रतिपरीक्षा की गयी है। प्रलेखीय साक्ष्य में चार्ज रिपोर्ट दिनांक 17-4-93, भंवर लाल मैना का नियुक्ति आदेश दिनांक 2-2-89 व चार्ज आदेश दिनांक 16-12-91 की फोटो प्रतियां प्रदर्श एम.1 लगायत 3 तक प्रस्तुत कर प्रदर्शित करवाए गये है।

6. मैंने दोनों पक्षकारों के विद्वान प्रतिनिधियों की बहस सुनी जो मुख्यत: उनके उक्त अभिवचनों के अनुरूप ही रही। विद्वान प्रतिनिधि प्रतिपक्षी द्वारा अपनी बहस समर्थन में माननीय उच्चतम न्यायालय का न्याय दृष्टान्त "ए. आई. आर. 1996 एस. सी. 1721-सब डिविजनल इन्सपैक्टर ऑफ पोस्ट, सायक्रम व अन्य बनाम "थैयम जोसेफ वगैरह" व माननीय पंजाब व हरियाणा उच्च न्यायालय के खण्ड पीठ का न्याय निर्णय" सिविल रिट पिटीशन संख्या 15356 ऑफ 1997—यूनियन ऑफ इंडिया जरिये सचिव, पोस्ट एंड टेलीग्राफ मंत्रालय व अन्य बनाम प्रेमचंद व अन्य—निर्णय दिनांक 23-3-98 उद्धरित किये हैं। प्रतिवाद में प्रतिनिधि प्रार्थी द्वारा माननीय उच्चतम न्यायालय का न्याय-दृष्टांत "ए. आई. आर. 1998 एस. सी. [illegible]-जनरल मैनेजर टेलीकॉम बनाम एस. श्री निवास राव व अन्य" उद्धरित किया है।

7 मैंने दोनों पक्षों की बहस पर विचार किया एवं उद्धरित उक्त न्याय दृष्टान्तों में प्रतिपादित न्याय सिद्धान्तों पर मनन किया तथा पत्रावली का ध्यान-पूर्वक अवलोकन किया।

8. क्लेम समर्थन में मौखिक साक्ष्य में प्रस्तुत शपथ-पत्र पर प्रार्थी श्रमिक की अपने नियोजक सम्बन्धी मुख्यत: यह साक्ष्य रही है कि प्रार्थी श्रमिक द्वारा प्रतिपक्षी नियोजन के यहां नियोजन में दिनांक 1/2/92 से डाकपाल के पद पर, पोस्ट ऑफिस बसोली तहसील हिण्डौली जिला बून्दी पर नियोजित होकर दि. 18/4/93 तक निरन्तर कार्य कर, उक्त नियोजन काल में हर बारह कलेण्डर मास में 240 दिवस से अधिक अवधि तक सेवा कार्य कर लिया गया था तब प्रतिपक्षी नियोजक द्वारा प्रार्थी श्रमिक को दि. 18/4/93 से अकारण ही, बिना कोई नोटिस या वेतन अदा किये अनुचित एवं अवैध प्रकार से सेवा से पृथक कर दिया और प्रार्थी श्रमिक के स्थान पर अन्य को सेवा पर नियोजित कर लिया जो प्रार्थी श्रमिक तत्पश्चात् से ही वर्तमान तक बेरोजगार रहा। प्रतिपक्षी नियोजक की ओर से प्रार्थी श्रमिक द्वारा कथित उक्त नियोजन-काल व कार्य दिवस स्वीकार्य रहे हैं तथा यह भी स्वीकार्य रहा है कि प्रतिपक्षी नियोजक द्वारा प्रार्थी श्रमिक को दिनांक 17/4/93 से सेवा से पृथक किया गया है। प्रतिपक्षी साक्षी की उक्त स्वीकार्य तथ्यों के संदर्भ में आगे यह साक्ष्य भी रही है कि ग्राम बसोली में शुरु से ही आज तक अतिरिक्त विभागीय शाखा डाकपाल का ही पद सृजित रहा है और प्रतिपक्षी नियोजक द्वारा प्रार्थी श्रमिक का चयन कर, अतिरिक्त विभागीय कर्मचारी, डाकपाल के रूप में ही उक्त सृजित पद पर नियुक्त किया गया था। प्रतिपक्षी साक्षी की आगे यह साक्ष्य भी रही है कि प्रतिपक्षी विभाग में अतिरिक्त विभागीय पदों पर नियुक्ति हेतु अतिरिक्त विभागीय एजेन्टों (आचरण एवं सेवा) नियमावली, 1964 बने हुये हैं जिन उक्त नियमों के अधीन ही अतिरिक्त विभागीय कर्मचारियों की नियुक्ति आचरण एवं सेवाएं संचालित होती हैं। प्रतिपक्षी साक्षी की आगे यह साक्ष्य भी रही है कि अतिरिक्त विभागीय डाकपाल कर्मचारी के पद पर नियुक्ति हेतु उक्त नियमों अन्य योग्यताओं के अतिरिक्त एक अनिवार्य योग्यता यह भी रही है कि उसके नाम पर कोई स्थायी सम्पत्ति रहे। प्रार्थी श्रमिक कोई स्थायी सम्पत्ति धारक नहीं रहा था, और इस बाबत् प्रार्थी श्रमिक द्वारा कोई सम्पत्ति धारक होने के प्रलेख भी प्रस्तुत नहीं किये गये थे तब प्रतिपक्षी नियोजक द्वारा उक्त योग्यता के अभाव में प्रार्थी श्रमिक का उक्त पद का चयन रद्द करते हुये उसे सेवा से पृथक कर दिया गया था। प्रार्थी श्रमिक द्वारा प्रतिपक्षी साक्षी की इस साक्ष्य का कि ग्राम बसोली में अतिरिक्त विभागीय डाकपाल का पद सृजित रहा था तथा प्रार्थी श्रमिक को उक्त पद पर अतिरिक्त विभागीय डाकपाल के रूप में ही प्रतिपक्षी द्वारा चयनित कर नियुक्त किया गया था को कोई खण्डन नहीं किया गया है तब प्रस्तुत प्रकरण में प्रतिपक्षी साक्षी की साक्ष्य में यह पूर्णत: प्रमाणित हुआ है कि प्रतिपक्षी के यहां प्रार्थी श्रमिक उक्त नियोजन काल में अतिरिक्त विभागीय कर्मचारी के रूप में नियोजित रहा है तब उसकी सेवाएं उक्त नियमावली, 1964 से भी पूर्णत: संचालित रही हैं। नियमावली, 1964 के भाग-II नियम 3 में अतिरिक्त विभागीय डाकपाल के पद के लिए जीवन निर्वाह के लिए पर्याप्त साधन होना व स्थायी सम्पत्ति धारक रहना अनिवार्य योग्यता रही है जिस उक्त योग्यता नियम को माननीय पंजाब व हरियाणा उच्च न्यायालय की खण्ड पीठ द्वारा उद्धरित उक्त सिविल रिट निर्णय दिनांक 23/3/98 में वैध होना भी माना गया है। प्रार्थी श्रमिक की उक्त योग्यता धारण के संदर्भ में यह साक्ष्य रही है कि उसके द्वारा स्थायी सम्पत्ति के कागजात् प्रतिपक्षी को भिजवा दिये गये थे। प्रतिपक्षी साक्षी द्वारा ऐसे किसी सम्पत्ति के कागजात को प्राप्त होने से इन्कार किया गया है। प्रार्थी श्रमिक द्वारा अपनी उक्त साक्ष्य के समर्थन में इस न्यायाधिकरण के समक्ष भी कोई सम्पत्ति धारक होने सम्बन्धी प्रलेखीय साक्ष्य प्रस्तुत नहीं की गयी है तब प्रार्थी श्रमिक की साक्ष्य से यह बात ई प्रमाणित नहीं हुआ है कि वह स्थायी सम्पत्ति धारक होने की योग्यता रखता हो। प्रमाणित उक्त तथ्यो के प्रकाश में अब न्यायाधिकरण को प्रतिपक्षी नियोजक की ओर से उठाई गई निम्न दो वैधानिक आपत्तियों पर विचार किया जाना भी आवश्यक रहा है।

9. प्रतिपक्षी नियोजक की ओर से प्रथम वैधानिक आपत्ति ये रही है कि प्रतिपक्षी पोस्ट एण्ड टेलीग्राफ विभाग अधिनियम के अधीन परिभाषित एक "उद्योग" नहीं रहा है। तब प्रतिपक्षी विभाग पर अधिनियम के प्रावधान प्रभावी नहीं होते है। विद्वान प्रतिनिधि प्रतिपक्षी द्वारा उक्त आपत्ति के समर्थन में माननीय उच्चतम न्यायालय का न्याय दृष्टान्त-ए०आई०आर० 1996-सुप्रीम कोर्ट 1271 भी उद्धरित किया है। विद्वान प्रतिनिधि प्रार्थी द्वारा उद्धरित उक्त न्याय दृष्टान्त के प्रतिवाद में माननीय उच्चतम न्यायालय की लार्जर बेंच का न्याय दृष्टान्त ए०आई०आर०-1998 सुप्रीम कोर्ट-656 उद्धरित किया है। तब उद्धरित उक्त अंतिम न्याय दृष्टान्त के अवलोकन पर पोस्ट एण्ड टेलीग्राफ विभाग को अधिनियम के अधीन परिभाषित एक "उद्योग" होना माना गया है तथा विद्वान प्रतिनिधि प्रतिपक्षी द्वारा उद्धरित माननीय उच्चतम न्यायालय के न्याय दृष्टान्त में प्रतिपादित न्याय सिद्धान्त को अमान्य करार दिया गया है। इस प्रकार माननीय उच्चतम न्यायालय के उक्त दोनो न्याय दृष्टान्तों पर विचार करने पर प्रतिपक्षी पोस्ट एण्ड टेलीग्राफ विभाग

अधिनियम के अधीन परिभाषित एक "उद्योग" रहना प्रमाणित होता है और विभाग पर अधिनियम के प्रावधान प्रभावी होना पाया जाता है। तब उक्त संदर्भ में प्रतिपक्षी नियोजक द्वारा उठाई गई उक्त प्रथम आपत्ति भी स्वीकार किये जाने योग्य नहीं पाई जाती है।

10. प्रतिपक्षी नियोजक की ओर से द्वितीय वैधानिक आपत्ति यह रही है कि प्रार्थी श्रमिक स्वीकार्य रूप में प्रतिपक्षी विभाग में अतिरिक्त विभागीय कर्मचारी डाकपाल रहा है। जिसकी सेवाऐं अतिरिक्त विभागीय एजेन्टों (आचरण एवं सेवा) नियमावली, 1964 से संचालित होती है। तब प्रार्थी श्रमिक एक औद्योगिक श्रमिक न रहकर एक लोक सेवक रहा है तब उसके किसी विवाद पर अधिनियम के प्रावधान प्रभावी नहीं होते हैं। विद्वान् प्रतिनिधि प्रतिपक्षी द्वारा उक्त आपत्ति के समर्थन में माननीय उच्चतम न्यायालय के उक्त उद्धरित न्याय दृष्टान्त सन् 1996 पर ही विश्वास व्यक्त किया गया है। प्रस्तुत प्रकरण में विवेचनोपरान्त प्रार्थी श्रमिक का प्रतिपक्षी नियोजक के यहां नियोजक में अतिरिक्त विभागीय कर्मचारी डाकपाल के रूप में नियोजित रहना ही प्रमाणित हुआ है। उद्धरित उक्त न्याय दृष्टान्त में माननीय उच्चतम न्यायालय द्वारा अतिरिक्त विभागीय एजेन्टों (आचरण एवं सेवा) नियमावली, 1964 पर विस्तार से विचार करते हुये अतिरिक्त विभागीय कर्मचारियों को लोक सेवक होना माना है और अधिनियम के अधीन परिभाषित (श्रमिक) होना नहीं माना है। माननीय उच्चतम न्यायालय द्वारा उक्त संदर्भ में निम्न न्याय सिद्धान्त प्रतिपादित किया गया है।

It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the conduct rules regulating the service conditions of ED Agents are governed by the Statutory regulation. It is now settled law of this Court that these employees are civil servants regulated by these conduct rules. Therefore, by necessary implication, they do not belong to the category of workman attracting the provisions of the Act. The approach adopted by the Tribunal, therefore, is clearly illegal.

माननीय उच्चतम न्यायालय द्वारा प्रतिपादित उक्त अभिमत को माननीय उच्चतम न्यायालय के लार्जर बेंच के 1998 के न्याय दृष्टान्त में अमान्य घोषित नहीं किया गया है, तब उद्धरित उक्त न्याय दृष्टान्त में प्रतिपादित उक्त न्याय सिद्धान्त एवं अभिमत वर्तमान में भी प्रभावी रहे हैं। इस प्रकार तथ्यात्मक एवं वैधानिक विवेचनोपरान्त प्रार्थी श्रमिक जो एक अतिरिक्त विभागीय कर्मचारी डाकपाल रहा है वह एक लोक सेवक रहा है और अधिनियम के अधीन परिभाषित कर्मकार नहीं रहा है तब वह अधिनियम के अधीन प्रावधानों का लाभ भी प्राप्त करने का अधिकारी नहीं रहा है और यह औद्योगिक न्यायाधिकरण भी प्रार्थी श्रमिक के प्रस्तुत उक्त विवाद को सुनने को वैधानिक रूप में सक्षम न्यायाधिकरण नहीं रहा है, तब प्रार्थी श्रमिक द्वारा प्रस्तुत उक्त विवाद इस न्यायाधिकरण के श्रवणाधिकार क्षेत्र का न रहने पर निरस्त किये जाने योग्य है।

11. अतः उक्त सम्पूर्ण विवेचन के आधार पर भारत सरकार, श्रम विभाग द्वारा सम्प्रेषित उक्त निर्देश को इस प्रकार उत्तरित किया जाता है कि प्रार्थी श्रमिक कैलाश चन्द्र आत्मज भंवर लाल अधिनियम के अधीन परिभाषित एक कर्मकार नहीं रहा है वरन् एक लोक सेवक रहना प्रमाणित हुआ है तब प्रार्थी श्रमिक अधिनियम के अधीन कोई लाभ प्राप्त करने का अधिकारी भी नहीं रहा है तथा प्रार्थी श्रमिक के एक लोक सेवक प्रमाणित होने पर सम्प्रेषित उक्त निर्देश भी इस औद्योगिक न्यायाधिकरण के श्रवणाधिकार का भी रहना नहीं पाया जाता है।

इस अधिनिर्णय को समुचित सरकार को नियमानुसार प्रकाशनार्थ भिजवाया जावे।

जगदीश प्रसाद शर्मा, न्यायाधीश

नई दिल्ली, 27 मई, 1999

का. आ. 1717.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. जयाबोस टेलीकॉम एण्ड एलाईड प्राईवेट लिमिटेड, कलकत्ता के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट, अरनाकुलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99 को प्राप्त हुआ था।

[सं. एल-40012/63/97-आई. आर. (डी यू)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 27th May, 1999

S.O. 1717.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Jayabose Telecom & Allied Pvt. Ltd., Calcutta and their workman, which was received by the Central Government on 27-5-1999.

[No. L-40012/63/97-IR (DU)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

(Tuesday, the 27th day of April, 1999)

Present :

Shri D. Mohanarajan, B. Sc., LL.B., Presiding Officer.

Industrial Dispute No. 21 of 1998(C)

Between :

Jayabose Telecom & Allied Pvt. Ltd., The Managing Director, 4/26 A, Jahura Bazar Lane, Calcutta-700 042

And

Shri. S. K. Sattar, C/o. S. K. Salim, Co-Axil Station, Kunniampuram. Ottappalam, Palghat-678 001, Kerala.

Representation :

Sri. Paulson C. Varghese,

Advocate, Gandhi Bhavan Bldgs.,

Banerji Road, Kacheripady,

Kochi-682018. ...For Management

AWARD

The Government of India as per Order No. L-40012/63/97/IR (DU) dated 16-4-1998 referred the following industrial dispute to this Court for adjudication :

> "Whether the action of the management of M/s. Jayabose Telecom & Allied Pvt. Ltd., Calcutta in terminating the services of Shri. S. K. Sattar, an ex-employee, w.e.f. 15-1-97 is just, proper and legal ? If not, to what relief is the workman entitled to ?"

2. Pursuant to the notice issued from this court the management entered appearance. The notice issued from this court to the workman was returned with endorsement that his whereabouts are unknown. Thereafter his notice was ordered to be served through the Assistant Labour Commissioner (Central), Ernakulam. He, in turn submitted a report stating that the workman is a native of West Bengal and has left the work site at Ottappalam before completion of the contract work and that his present whereabouts are unknown. The management has also filed an affidavit in the above lines. In the above circumstances, this court is pleased to think that the workman is not at all interested to pursue the dispute and that no industrial dispute is pending to be adjudicated.

In the result, the reference is answered holding that there is no subsisting industrial dispute to be adjudicated upon.

Ernakulam, D. MOHANARAJAN, Presiding Officer

27-4-1999.

नई दिल्ली, 27 मई, 1999

का. आ. 1718.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय लोक निर्माण विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99 को प्राप्त हुआ था।

[सं. एल-42011/47/95-आई. आर. (डी यू)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 27th May, 1999

S.O. 1718.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of C.P.W.D. and their workman, which was received by the Central Government on 27-5-1999.

[No. L-42011/47/95-IR (DU)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 13 of 1996

Parties : Employers in relation to the management of C.P.W.D.

AND

Their workmen.

Present :

Mr. Justice A.K. Chakravarty ..... Presiding Officer.

Appearance :

On behalf of Management — Mr. T. Chowdhury, Advocate.

On behalf of Workmen — Mr. P.K Munsi, Advocate.

State : West Bengal. Industry : Public Works.

AWARD

By order No. L-42011/47/95-IR (DU) dated 30-5-1996 the Central Government in exercise of its powers under Section 10 (1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of CPWD in not granting the difference of overtime on the revised pay scale is justified ? If not, to what relief the workmen are entitled to ?"

2. All India CPWD Employees Union (in short the union) has raised this industrial dispute for grant of difference of overtime allowance on the revised pay scale.

3. Union's case, in short, is that certain categories of staffs of Central Public Works Department (in short, CPWD) were benefited by virtue of an arbitration award dated 31-3-1988 as modified by the Hon'ble Delhi High Court. The Director General of Works, CPWD issue Office memorandum No. 22/9/93-EC-

X dated 20-10-1993 for implementation of the modified award, CPWD filed a Special leave petition before the Hon'ble Supreme Court of India against the said Award which was dismissed on 13-8-1993. The review petition before the Hon'ble Supreme Court was also dismissed on 19-11-1993. The Award was applicable to all workers in the categories of workcharged and regular who are or were in the rolls of the CPWD, with effect from 1-4-1981. The Pay of the concerned workers were fixed in the new revised scale on 1-1-1973 and again on 1-1-1986 in the new revised scale as per recommendation of the 4th Pay Commission, but the arrear was payable from 1-12-1981. The CPWD accordingly allowed all financial benefits by giving arrears of pay and allowances and other benefits including C.C.A., H.R.A etc. on the revised pay scale with retrospective effect. But the CPWD declined to pay difference of overtime payment. A claim was accordingly made by the union for payment of such arrear overtime allowance. Such payment having been refused, an industrial dispute was raised which culminated in the present reference. The union has also alleged that the instant reference is only for limited number of employees, namely, Lift operators etc. engaged in emergency works mainly connected with the public service and that too also for few hours. It is further alleged that the overtime payment is to be calculated on the basis of the wages drawn in the respective pay scale and when the pay scale is changed, overtime allowance must also be changed. It is also alleged that the concerned employees were detained on functional requirement and the management in exercising its right compelled those employees to work on overtime beyond normal working hours. The union has accordingly prayed for payment of overtime allowance in the revised pay scale for the period from 1-4-1981 to 31-3-1984

4. The management of CPWD filed a written statement, alleging, inter alia, that the issue regarding payment of overtime wages was not included in the arbitration reference. The union agitated the points about reclassification/recategorisation of the workchaged staffs and regular classified staffs. Management also alleged that since the Arbitrator nowhere recommended payment of overtime wages to the workers it was not possible for the department to acceed to the demands made subsequently for payment of arrear overtime wages. The management has also alleged that the payment of overtime allowance have substantial financial implication. Management accordingly prayed for dismissal of the case of the union.

5. A rejoinder is filed on behalf of the union with more or less similar allegations as made by the union in its written statment.

6. It appears from record that inspite of number of adjournments on earlier occasions, the management of CPWD was extremely tardy in taking steps in contesting the matter. It also appears that last chance was also given on earlier occasion to the management. Inspite of such orders, the management having failed to take any step today, it may be presumed that it is not interested in contesting the case. Mr. P.K. Munsi, learned Advocate appearing on behalf of the union also urged upon this Tribunal to dispose of the matter since the case has grown old. The reference having been made in 1996, no further time is allowed to the management and Mr. Munsi, learned Advocate for the union is called upon to proceed ex parte by examination of witnesses. Ex parte evidence of one of the concerned workman Jagdish Das is accodingly taken.

7. Before proceeding to discuss the value of the ex parte evidance adduced on behalf of the union for proving its case, it is necessary to consider whether the reference itself at all maintainable in the manner as it is framed. This Tribunal is called upon to decide whether the workmen are entitled to difference of overtime on the revised pay scale without mentioning who are the workmen, or, in other words in whose favour the Award is to be passed.

8. From paragraph 18 of the written statement of the union it will appear that the instant reference case is only for limited number of employees, namely, Lift Operators etc. engaged in emergency work mainly connected with the public service. Unless such employees are named in the schedule, any award passed by this Tribunal shall be infructutous. Since no Tribunal is to pass any vague or indefinite order without mentioning names of the persons in respect of whom the relief granted shall be available, the reference as framed cannot be said to be maintainable.

9. Regarding merits of the case it appears that the union has prayed for arrear overtime allowance on the ground of reclassification of their pay scales in terms of the Arbitration Award and it is alleged that though other allownces in terms of the said Arbitration Award was given, arrear overtime allownce was not allowed to the employees who are entitled to the same. The Arbitration Award was not marked as an exibit in this case. There is nothing to show that the Arbitration Award actually allowed payment of any overtrime allowance. In the aforesaid circumstances the union must be said to have failed to prove that any overtime allowance was payable to them as prayed for by it in terms of the Arbitration Award.

10. In view of what goes above, I am to hold that the case of the union fails on both the grounds of maintainability and merit. No relief can accordingly be granted to the workmen in this case.

This is may Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

The 17th May, 1999.

नई दिल्ली, 27 मई, 1999

का. आ.1719.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के

प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99 को प्राप्त हुआ था।

[सं. एल-43012/1/89-आई. आर. (विविध)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 27th May, 1999

S.O. 1719.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on 27-5-1999.

[No. L-43012/1/89-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE.

DATED : 17th May, 1999.

PRESENT : JUSTICE R. RAMAKRISHNA
PRESIDING OFFICER

C.R. NO. 38/89

I PARTY		II PARTY
Shri Pooswamy C/o B.G.M.Employees' Union Marikuppam P.O. K.G.F. 563 119	V/s.	The Managing Director Bharath Gold Mines Ltd. Oorgaum, K.G.F : 563 120

AWARD

1 The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/1/89-IR (Misc) dated 16-5-1989 on the following schedule :

THE SCHEDULE

"Whether the management of B.G.M.L., KGF, is justified in not correcting the date of birth of Sri. Pooswamy, Banksman, from 1932 to 1-2-37 as per the Transfer Certificate issued by South India Gouthama Buddist Higher Primary School, Marikuppam. If not, what relief is he entitled to ?"

2. The concerned workman in this dispute is Pooswamy. He was appointed in the second party company on 1-2-1952. At that time, this company was running by John Taylor and Company, a London Firm. The practise prevailing at that time was this company used to appoint Casual type of labourers to work in the underground of mines without a attaching too much of formalities of appointment regulations. If any person produced any document evidencing his correct date of birth the same used to be recorded in his register and when no such documents are given, they used to assess on the growth of a person as 20 years to provide the appointment. Therefore according to the second party the date of birth of the first party was 11-2-1932.

3. During 1963 and 1964 the management have issued two circulars for the benefit of the workman who are intended to change their date of birth recorded by the second party by producing valid proof in the regard.

4. According to the date of birth recorded in respect of this workman, he is to retire from services w.e.f. 1-1-1991.

5. The contention of this workman is that he has borned on 1-2-1937, and as the superannuation age was fixed to 60 years he is entitled to continue his services till 1-2-1997.

6. His plea as can be gathered in the claim statement, is that he had produced necessary documents before the management when they have issued circular for change of date of birth, but the management have not given any reply nor acknowledged those documents. Therefore the first party filed some documents which was in his favour to change the date of birth to read as 1-2-1937. Since the management has not agreed on the ground that the first party has not given any representation persuant to the circular issued by the management and therefore the documents now he has produced for this purpose are madmissible documents and he has also not entitled to make a claim to change his date of birth after a lapse of more than 30 years.

7. Evidence of this workman was recorded on 9-8-96. The evidence of the management was recorded on 23-3-1993.

8. Since there was no scope for framing any additioinal issue, this tribunal informed the parties to lead their evidence on merits on the schedule to the points of reference and necessary order is made in the order sheet.

9. The Personal Manager was examined as MW-1. He has deposed in his evidence that he is working from last 20 years and he knows the first party workman. He has joined on 11-2-1952 by giving his age as 20 years. At the time of joining he did not produce any documents. To joint the second party one should have attained 18 years. Ex-M-1 is the service record where the age of the first party is mentioned as 20 years (11-5-1952). Ex-M-2 is the declaration form of first party where the age is mentioned as found in Ex-M-1.

10. The second party issued a notification in 1963 and 1964 as per Ex-M-3 and Ex-M-4 calling the employees to get their date of birth corrected. The first party did not given any representation. As per circular Ex-M-5 a person working in underground or on the surface is to retire at the age of 58, earlier it was 55 years for underground man and 60 years for surface workman. As on 28-3-1973 the first party was working in underground.

11. In the cross examination of this witness much attention was focused to the fact whether he was working in the surface or in the underground during 1968 to 1970. A suggestion was made to him that first party gave a representation on 30-6-1968, but this witness has been shown his ignorance to this question.

12. As against the evidence of the second party the evidence of this workman is that at the time of joining he has given only his name, name of the father and address. He has not given any other particulars but the management themselves written his age. He has admitted that he was taken as casual labourer on 11-2-1952. He has denied his signature in Ex-M-1 after accepting it is his service card. His further evidence is that he had submitted an application along with his school certificate for change of date of birth persuant to the notification dated 2-12-1963. Some of the documents produced by him are marked as exhibits. Those documents are Ex-M-2 school certificate, a letter dated 5-3-1975 addressed to the second party as per Ex-W-3, SSLC record book Ex-W-4. According to him he has produced all these particulars to the second party but they have not sent any reply therefore he has filed this case.

13. In the cross examination it is elicited that he has not produced any documents at the time of joining, showing any particulars of his date of birth. He has accepted the fact of notification Ex-M-3 and M-4. He has denied the suggestion that he has not given any representation. His plea that Ex-W-1 and Ex-W-2 was given to the management dated 30-1-1964 and giving Ex-W-3 and Ex-W4 dated 5-3-1975 was questioned and this witness has said that he has no documents to show that these particulars were given to the management persuant to Ex-M-3 and Ex-M-4.

14. It is admitted by this workman that he has not produced any documents evidencing his date of birth at the time of joining on 11-2-1952 except his age was recorded as 20 years. If the contention of the first party is taken that he was born on 1-2-1937 his age would be 15 years. Therefore he was not eligible for appointment in Mines. Ex-M-1 is the service book where his date of birth was recorded as 11-2-1952. M-2 is a declaration for Provident Fund where his date of birth was recorded as 20 years (11-2-1952). The first party produced a Transfer Certificate marked as Ex-W-2 where his date of birth was recorded as 1-2-1937 The date on which he has last attended his school is shown as 7-4-1952. From this there is no endorsment made when this Transfer Certificate was given to him. He has also produced SSLC record book for private candidate where the date of birth was recorded as 1-2-1937. He has taken the examination during 1971.

15. The plea of the first party legally unsustainable both on facts and on law.

16. Factually he has sleptover his right for more than 30 years and he has also not exercised his right when the management issued the circular Ex-M-3 and Ex-M-4.

17. In union of India and another V/s. Devi Chand Sharma,1990 LAB IC 750 the learned Judges of a Division Bench of Punjab and Haryana High Court have depricated such move by a party to change his date of birth after getting an order by Civil Court which was certified by the University head. Their Lordships held :

> ' The plaintiff joined service in the Armed Force in 1953. Later on he joined Indian Military Academy in 1958. He gave his date of birth as 1-4-1933 in figures and words. Subsequently he claimed that his date of birth was wrongly recorded as 1-4-1933 instead of 1-4-1937 in his certificate. He also got corrected his date of birth by the University. His claim for rectification of age was considered by the Govt. though it was failed beyond two years which was prescribed for that purpose, but it was rejected in 1968. The defence pleaded was that in case the rectified date of birth was taken into consideration, he could not have initially secured the Govt. job which he had joined.
>
> Held, that the plaintiff, though cannot be denied to assess that his date of birth is April 1, 1937, would yet be estopped from claiming that for his service purposes his date of birth be treated as that, because that date of birth would have prevented him from regular entry into the service. Rather it would falsify him with regard to the declarations he made at the time of entry into service. So, for the purposes of service he is inextricably gripped to the date of birth which he got recorded at the time of his entry in service. Case law discussed.
>
> It can also be said that the conduct of the plaintiff, his diligence, or neglect and laches are factors which go to mould the relief. The plaintiff-respondent,which denied correction of the date of birth in the service record by order dated October 17, 1968, submitted by his own conduct to that order and he cannot be permitted to overlook the strict rules of the law of limitation. The defendant had categorically refused to rectify the date of birth in 1968. He should have within the period of limitation approached the Civil Court by means of a suitable suit. He neglected the matter for almost 17 years before he raked up the issue. In these circumstances, neither in law nor in

equity can the petitioner be permitted to challenge the order dated October 17, 1968.

Further, the departmental instructions provding for a period of limitation of two years for correcting one's date of birth as entered at the time of entry presupposes that there could be an error of the date of birth at the time of the entry into service, which was capable of being rectified. These departmental instructions have no force of law and nobody could be pinned down to that period of two years. Apart from those instruction, the defendants by order dated October 17, 1968, Specifically refused to correct the date as asked for by the plaintiff. In 1968, when the defendant appellant had refused to correct the age of the plaintiff, he had almost 16 years to go in service and it perhaps suited his convenience to then hide the controversy. It would be wise discretion for the Court in not granting him any relief on its unfolding at a time convenient to the plaintiff.

18. A Learned Single Judge of the Karnataka High Court in R. Kuppuraj V/s. Bharath Gold Mines Ltd., reported in ILR 1992 KAR 554 when an injunction was sought restraining superannuation-His Lordship held :

Held : There is no compelling reasons to grant any injunctive relief since the conduct of the plaintiff in accepting the recorded date of birth for more than three dacades gives a lie to his present claim of change in the date of birth. The present claim of the plaintiff based on Educational Certificate, birth extract seems very inconsequential against the sanctity and authority of the time honoured entries in the Service book which the plaintiff himself has been accepting for more than 10 years. Entires in the Service Records which have stood the test of time and remain unchallenged for a considerable period cannot be modified unless these are overwhelming reasons to establish that the entries had been made under dobious or erroneous circumstances which throw grave doubts about the authority or validity of the entries and the conduct of the plaintiff has been throughout transparently open and above board. It is recognised principle that unless the entry is challenged well in time unless it is established that the plaintiff had not derived any undue benefit which he would not have enjoyed his claim or changed date of birth at the fag end of one's career should not be countenanced. In view of the same, for purpose of obtaining injunctive relief plaintiff has not made out prima facie case warranting this Court's interference in granting injunctive relief.

19. In view of the law being settled the contention of the first paty to effect change in his date of birth is legally unsustainable. It is also submitted that some Civil Case filed by him for change of date of birth was rejected.

20. Infact the present dispute is not an Industrial Dispute at all.

21. By taking the over all circumsntances available in this case, I am making the follwing order :

ORDER

The second party are justified in not accepting a Transfer Certificate showing date of birth as 1-2-1937 as againts the date of birth registered earlier.

The reference is answered accordingly.

(Dictated to the Stenographer, transcribed by her, cocrected and signed by me on 17-5-1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 27 मई, 1999

का. आ. 1720.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माईन्स लि., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99 प्राप्त हुआ था

[सं. एल-43012/2/90-आई. आर.(विविध)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 27th May, 1999

S.O. 1720.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on 27-5-1999.

[No. L-43012/2/90-IR (Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE.

DATED : 17th May, 1999.

PRESENT : JUSTICE R. RAMAKRISHNA
PRESIDING OFFICER

C.R. NO. 32/90

I PARTY		II PARTY
The Vice President BGML Labour Association Oorgaum K.G.F: 563 120	V/s.	The Managing Director Bharath Gold Mines Ltd. Oorgaum, K.G.F: 563 120

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/2/90-IR (Misc) dated 18-5-1990 on the following schedule.

THE SCHEDULE

"Whether the management of B.G.M.L., KGF, is justified in reducing the pay of Sri. K. Rajoo, Clerk, Central workshop (Mechanical) by two increments. If not, what relief the employee is entitled to?"

2. The concerned workman in this Dispute is Shri K. Rajoo. He was working as a Clerk during 1985. He was provided with a residential quarters No. 106/260 D Block, Champion reef.

3. According to this workman the said house was badly damaged during the assembly elections held in March 1985. Meanwhile, quarters No. C-689 appears to have fell vacant for which management made advertisement. Though this workman applied it was not allotted to him. In this circumstances he has occupied the said quarters without realising the further consequences.

4. The contention of the second party was that this workman on a false plea of damage to his house has unauthorisedly occupied quarters No. C-689 though there was no damage to the house earlier allotted to him, and he has sub-let the same and therefore the management have issued a notice and conducted a domestic enquiry. He has been found guilty of the misconduct alleged against him and therefore the management on this basis of the report on the domestic enquiry have passed an order of dismissal.

5. Since this workman accepted his guilt and vacated the quarters No. C-689 a linient view was taken by the Appellate authorities and the order of punishment altered by reducing his pay scale by two increments.

6. This workman questioned the validity of domestic enquiry. Evidence was recorded on this issue. My predecessor in office, gave a finding on 31-7-1997 on this issue. It was held that the domestic enquiry was defective.

7. Thereafter the management was given an opportunity to prove the misconduct alleged against the workman independently.

8. Management examined a Clerk MW-2. This witness who has put up 17 years of service in the second party has deposed that on 13-3-1986 this workman unauthorisedly occupied the quarters belonged to second party. At that time he was working as a Clerk and incharge of this quarters. This information of unauthorised occupation was made known to him by the watchman at about 10.00 a.m. This fact was informed to the Chief Secretary/Overseer. The overseer inspected that quarters and found this workman and his family residing in that place.

9. The only suggestion made to this witness by the learned Advocate for the workman is that the Quarter C-689 was occupied on the instructions of the Superior authorities as the old quarters was damaged. This suggestion was denied by this witness.

10. If we analyse the evidence recorded on the validity of domestic enquiry and the evidence recorded referred to above on the merits of the dispute there is absolutely no material to support the case of the workman. In fact he has pleaded guilty before the enquiry officer and later retracted the said statement only to gain an opportunity for regularisation of his illegal occupation.

11. In fact he has vacated the quarters occupied by him unauthorisedly, after he has been imposed a punishment of dismissal and due to this tendency on his part the management took a linient view and by imposing a lesser punishment have re-instated him for the services. This order of the management is legally valid and does not call for any interference. There is no double punishment as contended by the learned advocate for the first party. In the result I am making the following order :

ORDER

The second party management are justified in imposing the punishment of reducing the pay by two increments. The reference is answered accordingly.

(Dictated to the Stenographer, transcribed by her, corrected and signed by me on 17-5-1999)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 मई, 1999

का. आ. 1721.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-99 को प्राप्त हुआ था।

[सं. एल-22012/594/94-सी-II]

वी.एस.ए. एस.पी. राजू, डैस्क अधिकारी

New Delhi, the 28th May, 1999

S.O. 1721.—In pursuance of Section 17 of the Industrial Dispute act. 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B. C.C.L. and their workman, which was received by the Central Government on 25-5-1999.

[No. L-22012/594/94-C-II]

V S A. S.P. RAJU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

REFERENCE NO. 20 OF 1995

Parties: Employees in relation to the management of Victoria West Colliery of M/s. B.C.C.L.

AND

Their Workman

Appearances :

For the Employers : Shri P.K. Das, Advocate

For the Workmen : Shri C.K. Jha, Organising Secretary of the Union

Industry : Coal

State : West Bengal

Dated, the 17th May, 1999

AWARD

By Order No. L-22012/594/94/IR (C-II) dated 1-6-95, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal.

> "Whether the action of the management of Victoria West Colliery of M/s.BCCL., in not declaring medically unfit to Sh. Sukhram Pasi, U.G. Loader and not providing employment to the dependent is justified? If not, to what relief is the concerned workman entitled to ?"

2. **Admitted background :—**

The concerned workman named Sri Sukhram Passi has been employed as Underground loader/Underground trammer in Victoria West Colliery under B.C.C.L., which is and underground mine His date of superannuation was 25-8-1994. Pneumoconiosis is an occupational disease from which coal workers, particularly underground workers, are prone to suffer. It is a respiratory disease caused due to harmful exposure to coal dust and the disease develops on account of dust deposit in lungs, which can be found and recorded radiologically. The concerned workman started suffering from pneumoconiosis since some time before 1988. He was examined by the Pneumoconiosis Medical Board (otherwise called the Appex Medical Board for deciding disability) in June, 1988 and it was confirmed by the said Board that he had been suffering from pneumoconiosis. However, the Board found him fit for duty and simultaneously advised a review of his case in 1991. About two years thereafter i.e. on 27-8-1990, the concerned workmen was again examined by the Pneumoconiosis Medical Board of the B.C.C.L., and it was found that he had been still suffering from pneumoconiosis to the extent of 1/1 p/p, equivalent to 10% disability. The Board however found his still fit for duty and again advised review of his case three years thereafter. In November, 1993 the concerned workman addressed an application to the Director (Personnel) through the Area Medical Officer of the colliery, complaining that due to the disease he had lost his ability to work and therein prayed for retirement on medical ground with the social security benefit of employment to his dependent as per para 9.4.3. of the NCWA-IV. Thereafter the concerned workman was again examined by the pneumoconiosis Medical Board on 10-1-1994 and it was again confirmed that he had been suffering from pneumoconiosis to the extent of 1/1 p/p equivalent to 10% disability. But the Board did not give any opinion regarding his fitness or unfitness for duty. The company also did not ascertain from the Board its opinion regarding fitness/unfitness of the workman for duty. Subsequently on 25-8-1994 the company gave normal superannuation to the workman. The union raised a formal Industrial dispute before the A.L C. (C), Asansol against refusal by the company for not declaring the concerned workman medically unfit for duty thereby depriving him from the society security benefit of employment to his dependent son. The consequential conciliation proceeding having ended in failure, the dispute has been referred to this Tribunal by the Appropriate Government for adjudication.

2. **The union's version :—**

The concerned workman suffered from the disease on account of poor safety & health measures in the underground mines where he had been working. A few months after his second medical examination dated 27-8-1990 by the Pneumoconiosis Medical Board, he felt incapacitated to work and so he submitted an application dated 19-12-1991 to the Chief Medical Officer of the company to declare him permanently medically unfit due to the disease. But, there was no response from the company on that application. On 24-6-1993 the concerned workman got himself examined by the Superintendent of the Sub-Divisional Hospital at Asansol, who gave the opinion that the workmen had been suffering

from chronic Asthmatic Bronchitis requiring avoidance of coal dust and all sorts of smokes and underground mining work. The workman submitted an appeal to the Director General of Mines Safety along with the aforesaid report of medical examination by the Sub-Divisional Hospital, Asansol complaining against inaction by the company in the matter. The D.G.M.S. referred the matter to the company. The Pneumoconiosis Medical Board which lastly examined the workman on 10-1-1994 did not deliberately give the specific opinion regarding fitness/unfitness for duty The Medical Board is under the control of the company and the company could have obtained specific opinion regarding fitness/ unfitness for duty by the Board. But the company deliberately left the matter undecided and thereby deprived the workman for being declared medically unfit for duty and in consequence debarred the workman from getting the social security benefit of employment to his dependent son.

3. **The management's version :—**

Admittedly the concerned workman was examined by the Medical Board on 27-8-1990 which confirmed that he had been suffering from pneumoconiosis to the extent of 1/1 p/p equivalent to 10% disability, but he was found to be otherwise fit for duty. Also admittedly in pursuance of the advice by the Board for re-examination after three years, the company got the case of the concerned workman reviewed, by the Pneumoconiosis Medical Board of the company on 10-1-1994. However, the Medical Board did not declare him unfit for duty. Of course, the Medical Board did not give any specific opinion regarding fitness/unfitness for duty. But, there being no specific opinion by the Board regarding his unfitness for duty, the company was in no position to give him retirement on medical ground. The concerned workman was accordingly given normal superannuation on due date i.e. on 25-8-1994. The company had no knowledge of the workman's medical examination in the Sub-Divisional Hospital, at Asansol. For the purpose of ascertaining disability, the company is bound by only its own Medical Board's opinion and report by an other Doctor or Hospital is not binding on it.

4 The union filed 17 numbers of treatment papers in respect of the concerned workman as out-door patient in the Central Hospital of the company at Dhanbad. All the treatment papers are for chest disease from which he suffered and they relate to the years 1992, 1993 and 1994 The union also filed photocopies of written intimation in respect of his medical examination dated 10-1-1994 and medical examination reports dated 14-3-1985 and 8-8-1991 in respect of one Sudhir Father and one Someshwar Mochi respectively by the pneumoconiosis Medical Board. The medical examination reports in respect of Sudhir Pathar and someshwar Moohi have been filed in an attempt to show that with the same 10% disability they were declared medically unfit for duty. The union examined the Chief Medical Officer of the Central Hospital holding office on 10-1-1994 which is the date of his last medical examination. The management examined the present Area Medical officer of the area covering the particular colliery where the concerned workmen was employed. The management also filed photocopies of findings of all the medical examinations.

5. The Area Medical officer explained in para 3 on his evidence that pneumoconisosis of Coal workers means dust deposit inside lungs resulting in fibrosis of lung tissues. The Chief Medical Officer examined by the union explained that all sorts of dust deposit may not cause pneumoconiosis and that such dust deposit in the lungs which results in pneumoconosis, can not be undone in spite of treatment. He further explained that it can be noticed and recorded radiologically and that this disease may or may not be associated with Eronchities.

6. The Chief Medical Officer is of the opinion, as explained in his evidence that unless the case of a workman suffering from 10% pneumoconiosis is associated with consequential complicacy if any or any other associated disease, 10% categorisation by itself does not make the workman unfit for his occupational work and this opinion is not disputed. He further explained that in the case of the other workman named Sudhir pathar pneumoconiosis to the extent of 10% was associated with Emphysema and he was found unfit for duty due to emphysema.

7. Sudhir Father's case therefore does not help the union The other person named Someshwar Mochi's case also does not help the union because his unfitness for duty was more on account of bone injury.

8. The medical records of the concerned workman therefore need careful scrutiny in order to find out whether he had been suffering from only 10% pneumoconiosis or associated with something else also.

9. During cross examination of the Area medical Officer (MW.1) his attention was drawn to some of the treatment papers in respect of the concerned workman issued by the Central Hospital of the company and on verification of the same he stated as follows in para-4 of his deposition:—

> "The prescription signed by the doctor on 9-7-92 diseases that the diagnosis was Bronchial Asthma of Sri Pasi. Another prescription dated 13-8-92 contains observation by the doctor that on observing straight X-Ray examination of lungs/Chest, Broncho Vascular Hilar prominence in the chest of Sukhram Pasi was noticed. The observation means that it was some kind of Bronchial congestion."

The report of Pulmonary Function Test dated 6-8-1992 Show that the patient had been suffering from obstructive and restrictive lung disease. In the back side of another treatment paper the physician has endorsed as follows under his signature dated 1-10-1993:—

> "At present his X-Ray dated 25-9-93 shows uniform small swellings all over lung back sides and Pneumoconiosis."

The latest X-Ray photo is dated 10-1-94, which was

taken during medical examination of the same date by the pneumoconiosis Medical Board. What the Radiologist found on examining it has been mentioned in the findings of the said medical examination. The Area Medical Officer (MW.1) referred to it and explained as follows in para-3 of his deposition :—

> "In the medical papers concerning examination by the Board in 1994, the Radiologist has reported that from the X-Ray photo he suspected that it might be a case of 'Pneumonistis" of RMZ i.e. middle zone of right lung. Pneumonistis means acute infection of lung tissues. Pneumoconiosis of coal workers means dust deposit inside lungs resulting in Fibrosis of lung tissues. Pneumonitis is totally different from pneumoconiosis in as much as pneumonitis is caused by bacterial or may be even by viral infection. The report of the Radiologist dated 10-1-94 in respect of Sukhram Pasi reveals that it was a case of pneumoconiosis associated with suspected pneumonitis."

The aforesaid materials categorically reveal that at least since 1992 the concerned workman had been suffering from other associated complicacies besides pneumoconiosis.

10. It is pertinent to recollect here that according to the medical opinion of the Chief Medical Officer of the Company (WW.1), as expressed by him in para-3 of his deposition, unless the case of a workman suffering from 10% Pneumoconiosis is associated with consequential complicacy if any or any other associated disease, 10% categorisation by itself does not make the workman unfit for his occupational work. Here it is associated with related ailments. Admittedly on earlier occasions i.e. in 1988 and 1990 the Pneumoconiosis Medical Board had given categorical opinion regarding fitness of the workman for duty. The most significant point is that the same Medical Board did not give any opinion at all in the Medical examination dated 10-1-1994 regarding fitness or unfitness for duty. The primary duty of the Pneumoconiosis Medical Board was to give specific opinion regarding fitness or unfitness for duty and the Medical Board Suppressed its opinion. The management also did not refer the matter beck to the Medical Board for ascertaining its specific opinion in the matter What prevented the Medical Board to opine at least that the workman was fit for duty? The aforesaid back-drop that the workman had been suffering from associated complicacies besides Pneumoconiosis more than satisfy that the Medical Board did not deliberately give any opinion regarding fitness or unfitness for duty possibly with a view to conceal the real state that the workman was unfit for duty, particularly because of the associated complicacies.

11. The facts justify the inference that the management ought to have declared the concerned workman medically unfit for his duty i.e. permanently disabled on account of the occupational disease coupled with the associated ailments and ought to have extended the social security benefit as per clause 9.4.0 of the NCWA-V to him.

12. Consulting observation and direction:—

The action of the management of Victoria West Colliery of M/S. B.C.C.L. In not declaring the concerned workman named Sh. Sukhram Pasi (U.G. Leader) medically unfit was not justified. The concerned workman be declared medically unfit for his duty i.e. permanently disabled w.e.f. the date of his last medical examination by the Pneumoconiosis Medical Board i e. 10-1-94 and the social security benefit of employment to dependent as per clause 9-4-0 of the NCWA-V be extended to him w.e.f. the said date.

The reference is answered accordingly.

R.S. MISHRA, Presiding officer.

नई दिल्ली, 28 मई, 1999

का. आ.1722.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल-4 के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99 को प्राप्त हुआ था।

[सं. एल-22012/269/97-आई.आर.(सी-II)]

बी.एस.ए. एस.पी. राजू, डैस्क अधिकारी

New Delhi, the 28th May, 1999

S.O. 1722.—In pursuance of Section 17 of the Industrial Dispute act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Asansol-4 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L and their workman, which was received by the Central Government on 27-5-1999.

[No. L-22012/269/97-IR/(C-II)]

V.S.A. S.P. RAJU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

REFERENCE NO. 14 OF 1998

Present: Shri R.S. Mishra,
Presiding Officer.

Parties: Employees in relation to the management of Demagoria Colliery of M/s. B.C.C. Ltd.,

AND

Their Workman.

Appearances :

For the Employer : Shri P.K. Das, Advocate

For the Workman : Shri S.K. Singh, Branch Secretary of the Union

Industry : Coal.

State : West Bengal

Dated, the 18th May, 1999

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication by the Government of India, Ministry of Labour's O.M.No. L—22012/269/97/IR (CM-II) dated 12-6-1998.

"Whether the action of the management of Damagoria Colliery of M/S. BCCL in not referring Sh. Bhim Dusadh, General Helper to Apex Medical Board for assessment of correct age is justified ? If not, to what relief the workman concerned is entitled ?"

2. The Branch Secretary of the union physically appears and says that the union is no more interested in the dispute.

3. Hence 'No Dispute Award' is passed.

R.S. MISHRA, Presiding Officer

नई दिल्ली, 28 मई, 1999

का. आ. 1723.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल-4 के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-99 को प्राप्त हुआ था।

[सं. एल-22012/33/93-आई.आर.(सी-II)]

वी.एस.ए. एस.पी. राजू, डैस्क अधिकारी

New Delhi, the 28th May, 1999

S.O. 1723.—In pursuance of Section 17 of the Industrial Dispute act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Asansol-4 as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workman, which was received by the Central Government on 27-5-1999.

[No. L-22012/33/93-IR(C-II)]

V.S.A. S.P. RAJU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

REFERENCE NO. 23/93

Present: Shri R.S. Mishra, Presiding Officer.

Parties: Employees in relation to the management of Damagoria Colliery of M.s. B.C C.Ltd.,

AND

Their Workman.

Appearances :

For the Employer : None.

For the Workman : None

Industry : Coal.

State : West Bengal

Dated, the 18th May, 1999

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication by the Government of India, Ministry of Labour's O.M.No L-22012(33)/93-IR (CM-II) dated 20-5-1993.

"Whether the action of the management of Damagoria Colliery in not protecting the wages of Shri Keso Prasad at the time of fixation at the time of regularisation in category I job from wagon loader in the year 1983 is justified ? If not, to what relief the workman concerned is entitled ?"

2 In spite of several adjournments the union neither appears nor takes any step It seem that they are no more interested in the dispute.

3 Hence 'No Dispute Award' is passed

R S MISHRA, Presiding Officer.

नई दिल्ली, 28 मई, 1999

का. आ. 1724.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-4-99 को प्राप्त हुआ था।

[सं. एल-22012/3/85-डी-V]

वी.एस.ए. एस.पी. राजू, डैस्क अधिकारी

New Delhi, the 28th May, 1999

S.O. 1724.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.C.L. and their workman, which was received by the Central Government on 23-4-1999.

[No L-22012/3/85-D-V.]

V.S.A. S.P. RAJU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CUM LABOUR COURT, JABALPUR (MP)

PRESIDING OFFICER—SHRI D. N. DIXIT

CASE NO. CGIT/LC/R/110/85

General Manager,
Jayant Project of CCL,
P.O Jayant Colliery,
Distt. Sidhi (MP) Applicant

Versus

The Joint General Secretary,
Coalfields Labour Union,
Main Road Hajaribagh,
Bihar. Non- applicant

AWARD

Delivered on this 31st day of March, 1999

1 The Ministry of Labour, Government of India vide order No. L-22012(3)/85-D.V dated 25-6-86 has referred the following dispute for adjudication by this tribunal:—

> "Whether the management of Central Coalfields Limited in their Jayant project is justified on engage 200 hopers and 457 Wharfwall contract Labour to do the work of coal breaking, crushing, shale and stone pickings breaking, stacking and on operations relating to the Hopers wharfwall. If not to what the workmen are entitled?"

2. The contention of the Union is that the Central Coalfields Ltd., Jayant Project (now northern coalfields Ltd.) is engaging 200 hopers and more than 457 Wharfwall labour known as chattiayya. They were engaged through contractors from 83 to 85. These workers were earlier engaged for wagon loading and chattaiya works since 1981. The contractors used to give fake names to the labour and labours were not paid correct wages. Hopers engaged through the contractors were made to work on grills and used to break coal pieces into 8 inch size. This coal was fed to the Bankers belt and this was taken tod the Railway wagons. The stones and other outside meterials was picked by hand. The coal pieces funning from patta was also collected manually. This action is a part of loading the process. The money workers used to break big pieces of coal brought from the mines into its mother pieces. The entire coal produced was supplied to NTPC which required coal of 8 inch size without stones, shale and foreign material.

3. The chattaiya labour used to stake well pieces of coal, to pick foreign material and to break big coal into small pieces. The coal supplied to NTPC was according to specification. This work was of permanent nature. There is no machine to pick up separate stones, shale and bend coal. This work is done by hand. The workers engaged has completed 240 days continuously within 12 months. The contractors changed but workers remained for years. All this work are covered by mining operations and prohibited by abolition and regulation of contract labour Act. This work cannot be done by the labour of the contractor. It has got to be done departmentally. In reality the labour was employed by the CCL and in order to escape liability, the help of contractors has been taken. The labour was not paid wages as per NCWA-II and later on NCWA.III. Even after 6-6-85, the work was done by other contractors. The contractors got themselves registered only in 1983 but they have given number of workers much less than the employee The workers were paid on piece rate basis. In the wage sheet singnature of the workers were not taken. The naute of work done by the workman is a permanent nature and they could not be employed through contractors. The Union prayed for award that these workers are of the CCL and they be given to the benefits of the regular employees of the CCL.

4. According to management, the reference is bad in law and not maintainable because there is no industrial dispute in the eye of the law in the present case. This court has no jurisdiction to adjudicate the same. The reference is extremely vague and does not specify the datails of contract labour. The appropriate Government has not applied its mind and made a reference in mechanical manner. The sponsoring union has no locus standi to sponsor the present dispute. This union has no existence in the Jayant project. There was no employer employee relationship between the labours and the management. The demand of the sponsoring union was different and the reference is entirely different.

5 The Jayant Project is a mechanised open case mine with highly sophisticated machinery. The entire production is diverted to Shakti Nagar Power House of NTPC. The contract

for pit complex was given to Heavy Engineering corporation Ranchi in June-80 and this project was to be completed in 28 months time. This project was not completed and as such from Oct-82 to 14-3-85, the work of this unit was executed by contractors. The contract was given for specific job and not for employment of labour. As soon as this machinery was delivered by Heavy Engineering corporation, the contractors were removed from the job. From 14-3-85, no contractor is working for the management at the Jayant project. The management was justified in engaging the contractors for this work. The contractors never performed the work of crushing of the coal. The work relating to hopers is not prohibited under the Contract Labour (Regulation and abolition) Act. The management was all along registered under the Contract labour (Regulation and abolition) Act. The contractors have been given the job were also registered under this Act for the relevant period. The work was of purely temporary nature. From 1985, there is no longer need of the work which the job contractors were doing because this unit is completely mechanised. The management has no obligation to provide employment to Ex-workers of Ex-contractors. The management did not require any additional workers The submission of the management is that the present reference be rejected and it be declared that the claiments are not entitled to any relief.

6 By order dated 13-2-87 this court made the following contractors party to this case-

1. M/s. R.B. Traders
2. M/s Bhaiyelal Shukla
3. M/s. M.K. Shipping and Chartering Co.

The Contractors appeared in this court in fits and starts and their contribution is insignificant.

7. The hearing of this case being placed on various parts of the country i.e. Delhi, Banaras, Singrauli, Jabalpur etc. in order to facilitate the parties to put up their case before this tribunal. Every effort has been made to give opportunity to all the parties to put their case to this court

8. The first contention of the management is that the present reference is bad in law and without jurisdiction. The first reference date 26-29/11/85 by the Central Govt. was amended by the Central Govt. and by order dated 86 has amended the reference. the following additions were made:—

"200 hopers and 457 wharfwall shale and stone pickings breaking stacking and on operations relating to the hopers and wharfwall."

The Central Govt. actually cancelled the first reference and has made the second reference. According to the management, this power is not vested in the appropriate government.

9. Once the reference is made, the power under Sec-10(c) of the Industrial Disputes Act 1947 is exhausted and the Central Govt becomes devoid of any power to cancel the said reference. The Honourable Supreme court in the case of D. N, Ganguly. AIR 1989-SC-1018 has stated that:—

> "The Act does not expressly confer any power on the appropriate Government to cancel or supersede a reference made under s. 10(1) of the Act. Nor can such power be claimed by implication on the strength of S.21 of the General Clauses Act The rule of construction enunciated by S.21 of the General clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of S.10(1) of the Industrial Disputes Act. If the appropriate Government has no authority to cancel or revoke a notification issued under S.10(1) the bonafides of the Government can hardly validate the impugned cancellation. AIR 1953 SC-95 Expl. and Disting 1958-(2) Lab LJ 198 AIR 1958 Cal 208 Overrules, 1958 (1) Lab LJ 50 (Kerala) and (5) AIR 1955 Mad 45, DistingAIR 1956 Pat 449 Affirmed "

10. Thus the 2nd reference by the Central Govt. is a complete usurption of jurisdiction

11. The 2nd contention of the management is that there was no industrial dispute existing are expected to create of dispute. Infact the Union did not raise any demand and the management has not refused to consider this demand. The domand raised by the Union is something different than what has been referred to this tribunal. In the absence of a specific demend there can be no reference and if a reference is made ewithout such demand it is bad in law.

12 In the present case, the Union did not question the right of the management to employ contractors for the job work Their demand is that workers be treated as eployees of the CCL This demand is not the subject matter of the present reference Thus the matter in reference and the demand of the Union are two different things. As such a Central Government can not have made the present reference.

13 The Honourable Supreme Court in the case of Sindhu Settlements Corporation Ltd. versus Industrial Tribunal of Gujarat and others reported in AIR 1986-SC Page-530 has held as follows —

> "An Industrial dispute, defined, must be a dispute between the employer and employees, the Govt. had to come to an opinion that an Industrial Dispute exists and that opinion can only be formed on the basis that there was a dispute between the employer and the employee. Where the retrenched employee and the Union had confined their demand to the management to retrenchment compensation and did not make any demand for reinstatement. the reference made by Govt. under Section 10 in respect of reinstatement is not competent The only reference that the Govt. could have made had to be related to payment of retrenchment compensations."

14. The 3rd contention of the managment is that the matter referred in the present referance is not an Industrial dispute as such this reference is without jurisdiction and usurption of jurisdiction.

15. An Industrial Dispute is defined under Sec-2(k) of the I. D. Act as follows :

> "Industrial Disputes means any dispute or difference between employees and employers and between employers and workmen or between workmen and workmen which is connected with the employment or non-employment of the terms of employment or with the condition of labour or any person."

16. The right of employer to employee a contractor is not an industrial dispute. The matter referred to any this particular case is not an Industrial Dispute. The Central Govt. therefore had no jurisdiction to make the present reference.

17. The next contention of the management is that the reference is factually incorrect. It is assumed that 200 persons were engaged as hopers and 457 wharfall contract labour to do the work of coal breaking crushing, shale and stone pickings and breakings, stacking and an operation relating to the hopers and wharfwall. In reality this work did not exist. In any case this was a disputed question and as such, the Central Govt. could not itself decide the disputed matter and then make a reference.

18. The management denied that the workman were doing the work stated in the reference. Thus factually there was a difference between the Union and the engagement about the number of workers as well as difference about the nature of work they were performing. Till this dispute is resolved the Central Govt. should not have mentioned in the reference about the number of workers and the nature of work they were doing. In this connection, the Honourable supreme Court in the case of Ram Avtar v/s State of Haryana, AIR 1985 Sc-pg 915 has held as follows:

> "The Govt performs an administrative act while either making or refusing to make a reference under S-10(1) it cannot delve into the merits of the dispute and take upon itself the deterination of lis. That would certainly be in excess of the power conferred by S. 10."

Thus the Central govt should not have assumed the number of workers and the nature of work they performed. The present reference is bad in this point also

19. The next contention of the management is that there was no employer employees relationship in the present case. In the present case, the workers were employed by the contractor, paid by the contractor and controlled by the contractor. There was no employer and employee relationship between the workmen and the management. Therefore the reference could not have been made by the Central Govt.

20. An Industrial Dispute arise when there is an employer and employee relationship. In the present case, there is no dispute between the employees and the employee and such relationship has not been established by the union the only question referred is whether the management was justified in engaging contract labour. The right of management to engage contract labour is not an industrial dispute.

21. The union has referred to the judgement of standard vaccum case reported in AIR-1978 SC-948. In this the case order of reference is differently worded and the specific question was whether the worker should be treated as workers of the standard vaccum refinery and wage scale and condition of service that are applicable to the workers of the Co. should be given to the employees. This dispute was covered under the industrial dispute act. This judgement given a detailed analysis of the act In the present case, the dispute is not covered with the employment. This the present reference is had because the matter referred is not an industrial dispute.

22. The next contention of the management is that an employent of contract labour is covered by the contract labour [regulation and abolition] act 1972. The only remedy is under this court and Industrial Disputes Act as no application what so ever to the said dispute

23 The Contract Labour (Regulation and Abolition) Act 1970 is a complete code in itself. It provides for various conditions like regularisation, maintenance of registers, powers of the Govt to private contract labour, appeal and prosecution etc. When the matter is specifically covered under a complete code, the only remedy of level is under the said code and no other enactment like Industrial Dispute Act , The Industrial Dispute Act has no application about the dispute in respect of contract labour The supreme court has held in the case of State of Punjab v/s labour court Jalandhar AIR 1979-SC that in case gratuity was claimed under Sec-33 (C) (2) of the I.D. Act and the court held that IID Act has no application even if the account is not paid. This was found to be correct. Thus where a complete provided of the remedies, the dispute covered by that court cannot be referred to this tribunal by a reference under Sec-10 of the Industrial Disputes act.

24 The next point for consideration is whether the 2nd reference could have been made to this tribunal without change in circumstances are new material which could not be placed earlier The Central Govt. has considered of the material available and made the first reference by order dated 29-11-85. After that there was no correspondences between the Union and the management There is no record that after the first reference in additional matter was placed before the Central Govt there is no change of circumstances between the 1st reference and the 2nd reference The Management has filed their written statement before this court yet the management was not given notice to show cause why first reference be amended and 2nd reference be made to this court. In all fairness the management would have been given notice and in case they choose they also would have been given a hearing before making a 2nd reference to this court This was not done, the

addition in the 2nd reference was made without any new material and without any application of individual.

25. The Honourable supreme court in the case of Hochtief Gaos versus State of Orissa reported in 1975 has held as under—

> "The Executive has to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not is direct themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bonafide nor they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons the court can direct to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of these reasons by not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts. AIR 1960 SC 1223 and AIR 1964 SC 1617 and 1968 AC 997 Rel. on.
>
> The company and the appellant contractor entered into a cost contract for executing the foundation and civil engineering work of company's rolling mills. Under the contract the company had to pay for the material and labour and the contractor got paid only for its professional services. The Govt. referred the dispute as to whether workmen of the contractor were entitled to bonus and if so what would be the quantum. The appellant contractor made an application before the govt. praying for modification of the referring order, by adding the company as a party to the reference and also adding an additional clause at the end namely. If bonus is payable who is responsible for payment of bonus to the workmen. The Govt. passed the impugned order that there was no material to include the company as a party to the dispute. Held that the order of the Govt. was unsustainable. The Govt. directed to reconsider the matter and 1969 LAB IC 1034 (Orissa), Reversed.
>
> Neither the Labour Commissioner nor the Govt. noticed that this contract is not one of the usual kind wherein a contractor undertakes to do a certain work for a certain su. In that case the question of profit and loss or as between the contractor and the party for whom he is executing the work any question as to whom was to pay Labour would at arise whether it is with regard to wages or bonus.
>
> The Govt's order really amounted to an outright refusal to consider relevant matters and the Govt. also misdirected itself in point of law in wholly oitting to take into account the relevant considerations. It had failed to realise that in effect the contractor employed labour for the company who was the real paymaster. It had failed to take into account the fact that the worker wanted the bonus from either the company or the appellant. Naturally the workman were not interested who paid the as long as they were paid.

26. Applying this test, I find that the reference is bad in law. The Central Govt. has ignored the material facts and has considered irrelevant and immaterial facts, the Honourable supreme Court in the above case has struck down reference. I hope that the reference is bad in law.

27. The Union has no locus standi at Singrauli. They have no obsership. The Union which made the reference has no legal existence. The witness of the management has stated this fact in their affidavits filed in this court. They have been cross examined on this point.

28. The Union was registered in the State of Bihar. It has no jurisdiction to operate the Singrauli as it has not been registered in HP. The constitution of the Union does not permit others of the contract labours. The Union has not produced any resolution between the Union and the management to prove that the Union was authorised to raise a dispute.

29. The Management witness Shri R.S. Garewal has stated in page 3 of his evidence that "The coalifiled labour union never existed at Jayant or singrauli Area from 1986 to 1988. It did not operate within this period. It has not raised the dispute regarding which the reference has been made directly with the management, This Union has no locus stand in this area and among workers.

30. The management witness Shri Dinesh Singh has stated in para-9 of his affidvit that he never saw Smt,.Ramnica Gupta on worksite of the contractor. According to him, no regular workman was a member of the concerned union at that time. Thus from the evidence of Shri R. S. Garewal and Shri Dinesh Singh it is established that in the Jayant Project coal fields labour Union was non-existence.

31. The Honourable Supreme Court in the case of Gujrat Electricity Board versus Hind Mazdoor Sabha AIR-1995-SC-1853 has stated that only contract labours themselves can raise a dispute regarding abolition. An outside union which operates in Bihar has no jurisdiction to raised this dispute. Thus this Union does not represent the workman and has no locus standi.

32. From the term of reference, it is clear that the question referred is whether the management was entitled to engage contract labour for particular work. The Supreme Court in the case of Gujrat Electricity Board has specifically rules that it is only Central Government who alone can take a decision for the abolition of contract labour and hold whether the contract labour is justified or not. This tribunal has no power to give

1694 GI/99—16

such finding. If this tribunal gives the finding that contract labour should not be employed than that will amount to a decision to abolish contract labour. The Supreme Court has held that such a decision cannot be given by an Industrial Tribunal. it is beyond the powers of the tribunal after coming into force of the said Act. On this ground alone, this court can not entertain the dispute.

33. This tribunal has been created under the provisions of Sec-7(a) of the Industrial Disputes Act only to decide the matter referred to it. Sec-10(4) of the ID Act is reproduced below:

> "Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section, or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the National Tribunal as the case may be shall confine its adjudication to points and matters incidental thereto."

It is therefore clear that this tribunal can only decide particular dispute referred by the appropriate Govt. Whether the contract is sham or the workers are entitled to regularisation on specific point. This point have not been referred by the Central Govt. Thus this court cannot enlarge the scope of reference and decide the matter outside the terms of reference.

34. Whenever the Central Govt. wanted to refer the dispute for regularisation or other relief they have specifically said so in the schedule of reference. There are several references pending in this court where such a specific reference has been made. The management has filed copies of reference in case No. R/59/95 and another reference dated 21-4-93 to illustrate their arguments. In both these references, specific reference is about regularisation and absorption of workers engaged by the contractors. As against this in the present case, the reference is not about regularisation and absorption.

35. In the case of Gujrat Electricity Board cited above, the terms of reference states as follows :—

> "Whether the workers whose services are engaged by the contractor and who are working in the NTPC of Gujrat Electicity Kukehi can legally claimed to the employees of CEB".

36. The Honourable Supreme Court in the case of Potery Mazdoor Panchyat versus Perfect Pottery Co. reported in AIR 1965-SC-Page 1191 the Honourable Supreme Court has laid down as under :

> "Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the HC is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondents decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the reference the tribunals were not called upon by the Govt. to adjudicate upon the question was to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the tribunals by the very terms of references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was infact colsed down by the management."

37. In case of Calcutta Electricity Supply Corporation versus Calcutta Electricity Supply Workers Union reported in AIR-1965-SC-Page. 1191 the Honourable Supreme Court has laid down as under :—

> "In construing the terms of reference and in determining the scope and nature of the points referred to the Industrial Tribunal the court must look at the order of reference itself. It is only the subject matter of reference with which an Industrial Tribunal can deal."

38. Similar situation has been dealt in the case of Mathura Prasad Shrivastava and another versus Sagar Electricity Supply Co. Ltd. reported in 1966-2-LLJ-Pg. 307 has held that

> "If the question whether the concerned coolies were the employees of the company or of an independent contractor was not raised in the reference that question cannot be considered indirectly in such reference."

39. All the judgements clearly state that there is no provision for travel beyond the terms of reference in any decision which was not directly referred will be outside the jurisdiction of this tribunal.

40. The arguments submitted by the Union that they have demanded regularisation of the workers when they raised the dispute before AIC(C). This demand cannot expand the terms of reference. It was for the Central Govt. to decide finally what matter should be referred. It is not necessary that every dispute raised can be referred. The management has taken initial objection in the written statement that the terms of reference cannot be enlarged. The Union if they were not satisfied with the terms of reference who have approached the Central Govt. for modifying the reference. This is not been done. The Union estopped from challenging the terms of reference. The Union has alleged that the workers were employed in prohibited category. This is denied by the management. The management has stated in the written statement that in the Jayant project in the coal, there is no shale and stone. This has been further stated in the evidence of management witness Shri B. N. Rao and Shri R. S. Garewal. This again is matter of reference by the Central Govt. This tribunal cannot go into this question as it has not been referred.

The parties cannot claim any relief beyond the pleading. The Honourable Supreme Court in the case of Municipal Committee Tauru Versus Harpal Singh and another has held as follows :—

> "Even in labour matters, the claimant goes before the court or tribunal with a case and it is upon the merits of that case that relief is to be granted or refused to him To look to his case is not look at technicalities. There is no substantial justice when the court or tribunal gives relief to workman which is on a basis that is totally contrary to the basis upon which he approached the court/ tribunal. Substantial justice must be done both to the employer and the employees The case of first respondent if looked as a whole, leaves no doubt that he deserves no relief The Labour Court and the High Court could not have overlooked the inconsistent stand taken by him in the claim statement and his evidence "

41. The Union has claimed only following relief in the class of statement of claim :—

> "Thus prays the Hon'ble tribunal to pass Award that these workers infact and in law workers of the CCL and have to be treated as such for the past, present and future period and are entitled to all benefits as if they have been and are regular CCL employees "

42. The relief claimed by the union has not been referred in the present reference. This relief is not incidental to the reference. This is totally a new and independent demand. Since this matter has not been referred by the Central Govt , this relief cannot be given by this tribunal

43. The dispute between the contractor and the workers has been settled by statement dated 4-12-85 which is a conciliation settlement binding under Sec 18 of the I D Act 1947. Under this settlement, a sum of Rs 3 lakhs 5 thousand has been paid to the workers in full and final settlement and their claim. After this settlement, the Union has withdrawn petition pending in the High Court of Madhya Pradesh MP No 985 in which the claim of workers for regularisation was made. As the Union has withdrawn this petition, this mater stands concluded.

43A. In the order of reference list of workmen is not enclosed. It only mentions 200 hopers and 457 wharfwall labours. According to management, the identity of claimants is necessary. In case the award is given in favour of the Union, it will be difficult to decipher who were the real claimants and who are the imposters.

44. The identity of the claimants should not be vague At the time of execution, the authority should not be at the mercy of any agency. In this respect the reference is vague and not specific. There is no annexure showing the name and identity of the workman with the reference The identity of the workman is very important

45 In the case of Azad Koyla Shramik Sabha Churimuri versus SECL in MP No. 1662/90, the High Curt of MP Jabalpur by order dated 12-12-94 has held that the case is reminded to this tribunal for deciding that who are those workman entitled for employment and to decide the identity of the workman. Thus even in a case where in the annexure, the name of 45 workmen and their fathers name was given, a confusion was created about these 45 workmen. In the present case even the names of the workmen are not mentioned.

46 In the award the identity of the beneficiary is necessary in order to pass the effective award so that it can be implemented It is very necessary that in the reference, the identity of the claimant is clear and unambiguous

47 In case of workman of M/s Shalimar Works Ltd. versus reported in AIR 1959-SC-Pg-1271 the Supreme Court has observed that if the reference is bad as no names of the workers given the order refusing the relief is just and proper In para 13 of this judgement the Honourable Supreme Court has observed that the list of the workman supplied was so bad that Industrial Tribunal did not think it worthwhile to act upon and due to such vagueness, the workman is not entitled for reinstatement.

48 In a case of reinstatement of workman the identity of the workman should be clear from the terms of reference. In the award there should be no ambiguity about the workman. In such a case without the identity of the workman in the award it is esteem risk and will also adversely effect the administration of Industrial peace. There is every possibility that unscrupulous workmen will be tempted to commit forgery and cheating because the award does not establish the identity of the beneficiary. There will be multiplicity of cases if the identity of the workman is left in doubt. As stated above, no effective award can be passed because the reference does not enclose the list of 200 hopers and 457 wharfwall labours.

49 No contract workers were employed for the sole and stone pickings, breaking and stacking as alleged in the amended reference

50. Without prejudice to the above conclusions and in addition to the same the submission of the management is that they were justified to engage contract labours The Central Govt. by amendment reference dated 25-6-86 has referred only the action of the management in employing contract labour As stated above, the Contract Labour (Regulation and Abolition) Act is complete code in itself and the only provision to prohibited contract labour is in the enactment. Sec. 10 of the Act permits the Govt after due enquiry to pass order of prohibition. This power is not transferred or vested in an Industrial Tribunal established under the I D Act

51 The management witness Shri B R N Rao and Shri R S Garewal has stated the circumstances under which the management, Jayant project was compelled to employ contract labour This project is one of the major products of Coal India Ltd when international collaboration It is a mechanised open case mine with highly sophisticated machinery The project report was prepared in consultation with Russian Experts and it was decided to have complete mechanised project for extraction of coal, crushing and its despatch

52 Heavy Engineering Corporation, Ranchi was awarded the job of receiving pit complex consisting of crusher and part of coal handling plant, in the month of June'80 and as per contract, the work was to be completed by them and put into commission in a period of 28 months. As per the contract,

the crusher should have been in operation by Oct-82 . However this corporation could not complete the work in time. In the meanwhile the production of coal has started and demand from customer was very pressing. Under such circumstances, the mangement had to give contract of work to the private contractors.

53. The labour employed by the contractor was managed by them supervised by them and paid by them The management has no interference in the working of labour, there was no direct or indirect link with this labour and the management.

54 The council for the unoin has argued that three things do not prove that labour employed by the contractor was working in the supervision and control of the management. Firstly the management used to supply helmet and boots to the labour. Secondly medical aid was given to labour by the hospitals of the managements. Thirdly in the settlement deed about wage of the labour, the management has signed as a party. This argument of the union is vehimentally opposed by the management.

55. The management has explained that the labour of the contractor who was handling the coal was required to wear helmet and boots. This was supplied by the contractors to labour. Whenever it was found that this labour was working either helmet or boots or both, the same were supplied to the labour and the price of this articles were adjusted in the bills of the contractors. Thus management has established that the contractors have paid the price of helmets and boots supplied by the management to the labour.

56. The management had laid evidence to prove that required medical aid was not supplied to the labour engaged by the contractors. When in the worksite any labour was hurt or sick, then only medical aid was given from the hospitals of CCL. If such plea is taken in future by the union, the management will not provide the humanity in service to the labour. Thus by this plea the union has done this service to the labour.

57. The settlement between labour and the contractors is filed in this case. It bears signature of the representative of the management by reading the settlement it becomes hearing that officer of the management has signed as a witness. The management has not signed as a party but as a witness, thus all the circumstances by the union is of non-consequences and they do not help the union.

58. The Supreme Court has repeatedly held that the management has a right to arrange its business in accordance with their convenience. The reference is invited to 1968(1) LJ Pg-566 Ghatge and Patil employees union versus Ghatge and Patil Transport Pvt. Ltd. The management witness Shri B. R. N. Roy, Dy. General Manager and Shri R. S. Gerewal General Manager have given a written statement justifying the employment of contractors in their evidence. The union has not reverted this evidence.

59 The contract and the licence issued by the RLC(C) the statutory authority all on record

60. As soon as the management installed the plant received from Heavy Engineering Corporation, the need of contractors no longer existed as this work was done by the Engineer The employment of contractor was required till the supply of crushing spent by the Heavy Engineering Corporation. Witness of management has stated that the engagement of labour start from 31-7-65. From this date, no labour has been employed to do the work which the contractors were doing.

61. The management has further submitted that there is no vacant post of labour for giving employment of workman because all the work is done by machines. The management now is employing only very skilled artisons To this category, the present workmen do not belong.

62. The Supreme Court in the case of AIR-1990-SC-Pg. 2054 has held that when there is no vacancy, the question of giving employment does not arise.

63. The failure of the Heavy Engineering Corporation and the pressure from the customers of the management made it necessary to engage contractors for the work This nature of work was temporary and for a short period. This nature of work was not permanent It is clear that from 85 till now contract has not been given for this work. Had it been permanent this work would have been given through some other contractor but it has not been done. This shows that the need was temporary and it came to an end as soon as the machines were installed and being to perform.

64. It is again repeated that in the reference, question of regularisation, employment of wages of workman has not been referred and these points cannot be decided by the tribunal. The union has sought in the statement of claim that 3 contractors work for the management from Feb-83 to July-85. After a lapse of 14 years, it is not desirable to disturb the function of the Jayant Project. The Industrial Court has to see that industrial peace is maintained and no dislocation of production results by the orders of the court.

65. The Honourable Supreme Court in the case of Deenanath Versus National Fertilizers Ltd. 1992(1)/SSC-Pg. 695 has held as under :

> "From the above provisions it is clear that the Act serves two foid purposes (1) regulation of the conditions of service of the workers employed by the contractors who is engaged by a principal employer and (2) also provide for the appropriate government abolishing contract labour altogether, in certain notified processes, operation or other works in any establishment Neither the Act nor the rules framed by the Central Government or the appropriate govt. provide that upon abolition

The parties cannot claim any relief beyond the pleading. The Honourable Supreme Court in the case of Municipal Committee Tauru Versus Harpal Singh and another has held as follows :—

> "Even in labour matters, the claimant goes before the court or tribunal with a case and it is upon the merits of that case that relief is to be granted or refused to him To look to his case is not look at technicalities. There is no substantial justice when the court or tribunal gives relief to workman which is on a basis that is totally contrary to the basis upon which he approached the court/ tribunal. Substantial justice must be done both to the employer and the employees. The case of first respondent if looked as a whole, leaves no doubt that he deserves no relief. The Labour Court and the High Court could not have overlooked the inconsistent stand taken by him in the claim statement and his evidence."

41. The Union has claimed only following relief in the class of statement of claim :—

> "Thus prays the Hon'ble tribunal to pass Award that these workers infact and in law workers of the CCL and have to be treated as such for the past, present and future period and are entitled to all benefits as if they have been and are regular CCL employees."

42 The relief claimed by the union has not been referred in the present reference This relief is not incidental to the reference. This is totally a new and independent demand. Since this matter has not been referred by the Central Govt., this relief cannot be given by this tribunal.

43. The dispute between the contractor and the workers has been settled by statement dated 4-12-85 which is a conciliation settlement binding under Sec.18 of the I D. Act [illegible] this settlement, a sum of Rs. 3 lakhs 5 thousand has been paid to the [illegible] in full and final settlement and their claim. After this settlement, the Union has withdrawn petition pending in the High Court of Madhya Pradesh MP No. 985 in which the claim of workers for regularisation was made. As the Union has withdrawn this petition, this mater stands concluded.

43A. In the order of reference list of workmen is not enclosed. It only mentions 200 hopers and 457 wharfwall labours. According to management, the identity of claimants is necessary. In case the award is given in favour of the Union, it will be difficult to decipher who were the real claimants and who are the imposters.

44. The identity of the claimants should not be vague. At the time of execution, the authority should not be at the mercy of any agency. In this respect the reference is vague and not specific. There is no annexure showing the name and identity of the workman with the reference. The identity of the workman is very important.

45. In the case of Azad Koyla Shramik Sabha Chirimiri versus SECL in MP No 1662/90, the High Curt of MP Jabalpur by order dated 12-12-94 has held that the case is remanded to this tribunal for deciding that who are those workman entitled for employment and to decide the identity of the workman. Thus even in a case where in the annexure, the name of 45 workmen and their fathers name was given, a confusion was created about these 45 workmen In the present case even the names of the workmen are not mentioned.

46. In the award the identity of the beneficiary is necessary in order to pass the effective award so that it can be implemented It is very necessary that in the reference, the identity of the claimant is clear and unambiguous

47 In case of workman of M/s Shalimar Works Ltd versus reported in AIR 1959-SC-Pg-1271 the Supreme Court has observed that if the reference is bad as no names of the workers given the order refusing the relief is just and proper. In para 13 of this judgement the Honourable Supreme Court has observed that the list of the workman supplied was so bad that Industrial Tribunal did not think it worthwhile to act upon and due to such vagueness, the workman is not entitled for reinstatement

48. In a case of reinstatement of workman the identity of the workman should be clear from the terms of reference. In the award there should be no ambiguity about the workman. In such a case without the identity of the workman in the award it is esteem risk and will also adversely effect the administration of Industrial peace. There is every possibility that unscrupulous workmen will be tempted to commit forgery and cheating because the award does not establish the identity of the beneficiary. There will be multiplicity of cases if the identity of the workman is left in doubt. As stated above, no effective award can be passed because the reference does not enclose the list of 200 hopers and 457 wharfwall labours

49. No contract workers were employed for the sole and stone pickings, breaking and stacking as alleged in the amended reference

50. Without prejudice to the above conclusions and in addition to the same the submission of the management is that they were justified to engage contract labours The Central Govt by amendment reference dated 25-6-86 has referred only the action of the management in employing contract labour. As stated above, the Contract Labour (Regulation and Abolition) Act is complete code in itself and the only provision to prohibited contract labour is in the enactment Sec. 10 of the Act permits the Govt after due enquiry to pass order of prohibition. This power is not transferred or vested in an Industrial Tribunal established under the I.D Act

51 The management witness Shri B.R. N. Rao and Shri R.S. Garewal has stated the circumstances under which the management, Jayant project was compelled to employ contract labour. This project is one of the major products of Coal India Ltd. when international collaboration. It is a mechanised open case mine with highly sophisticated machinery. The project report was prepared in consultation with Russian Experts and it was decided to have complete mechanised project for extraction of coal, crushing and its despatch.

52 Heavy Engineering Corporation, Ranchi was awarded the job of receiving pit complex consisting of crusher and part of coal handling plant, in the month of June'80 and as per contract, the work was to be completed by them and put into commission in a period of 28 months. As per the contract,

the crusher should have been in operation by Oct-82 However this corporation could not complete the work in time. In the meanwhile the production of coal has started and demand from customer was very pressing. Under such circumstances, the mangement had to give contract of work to the private contractors

53. The labour employed by the contractor was managed by them supervised by them and paid by them. The management has no interference in the working of labour, there was no direct or indirect link with this labour and the management.

54 The council for the unoin has argued that three things do not prove that labour employed by the contractor was working in the supervision and control of the management Firstly the management used to supply helmet and boots to the labour. Secondly medical aid was given to labour by the hospitals of the managements. Thirdly in the settlement deed about wage of the labour, the management has signed as a party. This argument of the union is vehimentally opposed by the management.

55. The management has explained that the labour of the contractor who was handling the coal was required to wear helmet and boots. This was supplied by the contractors to labour. Whenever it was found that this labour was working either helmet or boots or both, the same were supplied to the labour and the price of this articles were adjusted in the bills of the contractors. Thus management has established that the contractors have paid the price of helmets and boots supplied by the management to the labour.

56. The management had laid evidence to prove that required medical aid was not supplied to the labour engaged by the contractors. When in the worksite any labour was hurt or sick, then only medical aid was given from the hospitals of CCL If such plea is taken in future by the union, the management will not provide the humanity in service to the labour. Thus by this plea the union has done this service to the labour.

57. The settlement between labour and the contractors is filed in this case. It bears signature of the representative of the management by reading the settlement it becomes hearing that officer of the management has signed as a witness. The management has not signed as a party but as a witness, thus all the circumstances by the union is of non-consequences and they do not help the union.

58. The Supreme Court has repeatedly held that the management has a right to arrange its business in accordance with their convenience. The reference is invited to 1968(1) LJ Pg-566 Ghatge and Patil employees union versus Ghatge and Patil Transport Pvt. Ltd. The management witness Shri B. R. N. Roy, Dy. General Manager and Shri R. S Gerewal General Manager have given a written statement justifying the employment of contractors in their evidence. The union has not reverted this evidence.

59 The contract and the licence issued by the RLC(C) the statutory authority all on record

60. As soon as the management installed the plant received from Heavy Engineering Corporation, the need of contractors no longer existed as this work was done by the Engineer. The employment of contractor was required till the supply of crushing spent by the Heavy Engineering Corporation. Witness of management has stated that the engagement of labour start from 31-7-65 From this date, no labour has been employed to do the work which the contractors were doing.

61. The management has further submitted that there is no vacant post of labour for giving employment of workman because all the work is done by machines The management now is employing only very skilled artisons. To this category, the present workmen do not belong

62 The Supreme Court in the case of AIR-1990-SC-Pg. 2054 has held that when there is no vacancy, the question of giving employment does not arise

63. The failure of the Heavy Engineering Corporation and the pressure from the customers of the management made it necessary to engage contractors for the work. This nature of work was temporary and for a short period This nature of work was not permanent It is clear that from 85 till now contract has not been given for this work. Had it been permanent this work would have been given through some other contractor but it has not been done. This shows that the need was temporary and it came to an end as soon as the machines were installed and being to perform.

64 It is again repeated that in the reference, question of regularisation, employment of wages of workman has not been referred and these points cannot be decided by the tribunal. The union has sought in the statement of claim that 3 contractors work for the management from Feb-83 to July-85. After a lapse of 14 years, it is not desirable to disturb the function of the Jayant Project. The Industrial Court has to see that industrial peace is maintained and no dislocation of production results by the orders of the court.

65 The Honourable Supreme Court in the case of Deenanath Versus National Fertilizers Ltd. 1992(1)/SSC-Pg. 695 has held as under .

> "From the above provisions it is clear that the Act serves two fold purposes (1) regulation of the conditions of service of the workers employed by the contractors who is engaged by a principal employer and (2) also provide for the appropriate government abolishing contract labour altogether, in certain notified processes, operation or other works in any establishment. Neither the Act nor the rules framed by the Central Government or the appropriate govt. provide that upon abolition

of contract labour, the said labour would be directly absorbed by the principal employer." The Honourable Supreme Court has held that even when contract labour employed in contrary to law, there can be no jurisdiction to give employmen to the principal employer.

66. The union argued that the labour employed by the contractors can be appointed by the management because vacancies frequently occur. It was further suggested that Coal India employees about 7 lakh labours and the present workman can be adjusted in any of the coal mines. These assertions are denied by the councils of management. According to him firstly it has to be decided how many posts are vacant and then only appoint can be given. The reliance has been placed in the judgement of the Supreme Court in Director of Education (Secondary and another) versus Pushpendra Kumar and others 1998-LAB-IC-2123 that— "having regard to the fact that there are large number of posts falling in class IV and appointment on these posts I made by direct recruitment the object underlying the provision for giving employment to a dependent of a person employed on teaching/non-teaching staff who dies in harness would be achieved if the said provision in the regulation is construed to mean that in the matter of appointment of a dependent of a teaching/non-teaching staff in a non government recognised added institution dying in harness if a post in class III is not available in the institution in which the deceased employee was employed or in any other institution in the district the dependent would be appointed on a class IV post in the institution in which the deceased employee was employed fund for that purpose a supernumerary post in class-IV may be created. If the regulation are thus construed the respondents applicants could be appointed on a class IV and they could not seek a direction for being appointed on a class III post and for creation of supernumeary post in class III for that purpose. We are, therefore, unable to uphold the direction given by the High Court in the impugned judgements whereby the respondents have been directed to be appointed on a class III post if they posses the requisite qualifications for such a post and in case no class III post is available, then a supernumerary class III post be created for the purpose of such appointment."

66. The result of the above discussion is that following position emerges—

(a) Terms of reference do not permit court to travel beyond it and court cannot entertain the claim of regularisation of the employment or treating the labour as employees of the management.

(b) The question whether the contract was sham is also beyond the perview of the reference.

(c) The names of the claimant-workman is not in the reference hence the claim has to be rejected as false.

(d) The management was entitled to employ contractors for a temporary period for specific in the present circumstances.

(e) The management had no control, provision over the employees of the contractors.

(f) There was no shale and stone picking and stacking. The contract were genuine.

(g) The question whether the contract was permissible or not is also beyond the jurisdiction of this court in the light of judgement of Honourable Supreme Court in the case of Gujarat Electricity Board

(h) The union and its workman have not laid down any case against the management.

68. The reference is not maintainable. The action of the management in employing the contractors is fully justified. The union and its members are not entitled to the relief as prayed. The award is passed in favour of the management. Parties to bear their own cost.

69. Copies of the award be sent to the Ministry of Labour, Government of India as per rules.

31-3-99.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 4 जून, 1999

का. आ. 1725.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-99 प्राप्त हुआ था।

[सं. एल-19011/11/77-डी-IV B]

बी.एस.ए. एस.पी. राजू, डैस्क अधिकारी

New Delhi, the 4th June, 1999

S.O. 1725.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of E. C. L. and their workman, which was received by the Central Government on 2-6-1999.

[No. L-19011/11/77-D-IV B]

V.S.A. S.P. RAJU, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, AT CALCUTTA

REFERENCE NO. 77 of 1978

PARTIES : Employers in relation to the management of Dalurband Colliery of Eastern Coalfields Limited, P.O. Ukhra District Burdwan.

AND

Their workmen

PRESENT :

Mr. Justice A.K. Chakravarty
....Presiding Officer

Appearance :

On behalf of Management — Mr. Arunava Ghosh, Advocate with Mr. R. Talukdar, Advocate and Mr. D. Mukherjee, Advocate.

On behalf of Workmen — Mr. S.S. Chowdhury, Advocate

State : West Bengal — Industry : Coal

AWARD

By Order No. L-19011/11/77-D-IV (B) dated 8th September, 1978 the Central Government in exercise of its powers under section 10 (1) (d) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Dalurband Colliery Sub-Area M/s. Eastern Coalfields Limited in stopping from work the 156 wages loaders as mentioned in the Annexure from 31-1-76 is justified ? IF so, to what relief are the concerned workmen entitled ?"

ANNEXURE

S. No.	Name	Father's/Husband's Name
1	2	3
1.	Chandan Das	Shri Durga Das
2.	Ajodhya Bhuiya	Shri Bramhdeo Bhuia
3.	Benarashi Buiya	B/Pairu Bhuia
4.	Sugia Kamin	Shri Benarshi Bhuia
5.	Runia Kamin	Shri Ajodhya Bhuia
6.	Dhamo Bhuiya	L/Bonwari Bhuiya
7.	Jma Bhuiya	Shri Gango Bhuiya
8.	Chamdo Bhuiya	Shri Ramlal Bhuiya
9.	Eidayat Mia	
10.	Mustafa Mia	Jobadin Mia
11	Idrish Mia	Lakat Mia
12.	Kamruddin Mia	Tetar Mia
13	Ramdhaja Bhuiya	Mohendra Bhuiya
14.	Rajendra Choudhury	Dhanraj Choudhury
15.	Sitaram Tanti	DahuTanti
16.	Chandra Jadab	Dhobi Jadab
17.	Muni Jadab	Sreepati Jadab
18.	Ashok Singh	Mahabor Singh
19.	Osman Mia	Rafique Mia
20.	Sheobali Choudhury	Bhudu Choudhury
21	Md. Safique	Nur Mohamed
22.	Hariniwas Mishra	Dharamnath Mishra
23.	Atwari Kamin	Arjun Bhuiya
24	Jagadish Show	Munshi Show
25.	Baijnath Show	Sukar Show
26.	Raham Khan	Ayub Khan
27.	Meghu Bhuiya	Sanichar Bhuiya
28.	Netia Bhuiya	Santoki Bhuiya
29.	Manka Bhuiya	Kishun Bhuiya
30.	Naresh Bhuiya	Chando Bhuiya
31.	Ch. Kari Kamar	Ch. Kesho Bhuiya
32.	Ramkishun Bhuiya	Dhani Bhuiya
33.	Sukhendra Sharma	Rundin Sharma
34.	Ramdayal Bhuiya	Sahdeo Bhuiya
35.	Tilok Bhuiya	Siso Bhuiya
36.	Dhaneswar Singh	Ramabatar Singh
37.	Amla Kamin	Bajrangi Mahato
38.	Champa Kamin	Prabhu Bhuiya
39.	Sk. Ajij	Allauddin Mia
40.	Bonia Rajbhar	Indradeo Rajbhar
41.	Surjug Jadeb	Jiut Jadab
42.	Nanku Tanti	Ramdhani Tanti
43.	Nandji Singh	Kedar Singh
44.	Hridaynandan Singh	Khedaran Singh

1	2	3
45.	Adalat Singh	Munseswar Singh
46.	Awadk Kishor Chobey	Ramdhani Chobey
47.	Chandralal Singh	Chandrika Singh
48.	Bindeswari Singh	Ramnandan Singh
49.	Bachalal Ram	Saral Ram
50.	Lalbchari Pandey	Ramnarayan Pandey
51.	Ram Bachan Singh	Siwani Singh
52.	Lalan Singh	Kedar Singh
53.	Bhukan Singh	Jagat Singh
54.	Sibnarayan Noonia	Ramcharitor Noonia
55	Khelari Bhuiya	Abup Bhuiya
56.	Jogeswar Bhuiya	Huro Bhuiya
57.	Maksudari Tanti	
58.	Sarjug Das	Lakhan Das
59.	Ch Prabhu Bhuiya	Lachhuman Bhuiya
60.	Sukdeo Bhuiya	Bhagawandin Bhuiya
61.	Kameswar Paswan	Rameswar Paswan
62	Bineswar Bhuiya	Pairu Bhuiya
63.	Jogeswar Mudi	Gopi Mudi
64.	Mahadeo Ram	Bchari Ram
65.	Manbadh Mahato	Dhora Mahato
66.	Dukhani Kamin	Siwrath Jadab
67.	Rameswar Bhuiya	Chaty Bhuiya
68.	Degan Bhuiya	Ramu Bhuiya
69.	Kaila Bhuiya	Foudi Bhuiya
70.	Dulia Kamin	Muni Bhuiya
71.	Dulari Kamin	Ramlakhan Bhuiya
72.	Sangeswar Noonia	Chambnia Noonia
73	Minwa Kamin	Aklu Nonia
74.	Mana Kamin	Singeswar Nonia
75.	Ekram Khan	Daud Mia
76.	Kailashia Kamin	Sankaria Bhuiya
77.	Jasadha Kamin	Naresh Bhuiya
78.	Piru Mia	Aktar Mia
79.	Ramanandan Tiwari	Ramtaraka Tewari
80.	Ganga Bhuiya	Pairu Bhuiya
81.	Sukatoo Das	Buni Das
82.	Sundra Das	Jakher Das
83.	Ramcharan Paswan	Horil Paswan
84.	Muns Saw	
85.	Payal Bhuiya	Musan Bhuiya
86.	Murati Kamin	Arjun Bhuiya
87.	Arjun Prasad	Mahabir Prasad
88.	Sankar Bhuiya	Ramu Bhuiya
89.	Chhatan Bhuiya	Bhado Bhuiya
90.	Prabati Kamin	Arjun Bhiya
91.	Baldeo Roy	Nathun Roy
92.	Basanti Kamin	Bilatu Bhuiya
93.	Bajrangi Mahato	Babulal Mahato
94	Raju Mahato	Amrit Mahato
95.	Karu Mahato	Lakhan Mahato
96.	Jogendra Rawat	Dhanraj Rawat
97.	Surendra Tewari	Basudeo Tiwari
98.	Baijnath Singh	Birohha Singh
99.	Rudal Mishra	
100	Rampujan Choudhury	Hira Choudhury
101.	Jivlal Paswan	
102.	Jagannath Routh	Amika Routh
103.	Baijnath Routh	Amika Routh
104.	Mastan Singh	Mukhtar Singh
105.	Surebhawan Gararia	Lugari Gararia
106.	Taro Noonia	Baudhu Nonia
107.	Santi Debi Nonia	Taro Nonia
108.	Basabti Kamin	Karu Bhiya
109.	Iqldi Kamin	Sakti Rabidas
110.	Indrawati Kamin	Rameswar Bhuiya
111.	Khelanon Show	
112.	Atowari Bhuiya	Sarju Bhuiya
113.	Chandeswar Tanti	Jailo Tanti
114.	Dhansi Jasawar	Raghunath Jasawar
115.	Ramakant Mishra	Gourinath Mishra
116.	Kailash Kamin	Sanidhor Bhuiya

1	2	3
117.	Paua Kamin	Sibu Bhuiya
118.	Goralal Noonia	Chhotan Noonia
119	Krishna Pandey	Jayanarayan Pandey
120.	Prasadi Bhuiya	Babulal Bhuiya
121.	Ujir Bhuiya	Bangali Bhuiya
122.	Tusia Kamin	Natho Bhuiya
123.	Shyapati Kamin	Jagdish Bhuiya
124.	Narayan Noonia	
125.	Prabhu Bhuiya	Kameswar Prasad
126.	Kaproowa Kamin	Badri Bhuiya
127	IutanTuri	Sukha Turi
128.	Dc. Kailu Bhuiya	Tarai Bhuiya
129.	Rajendra Noonia	Amrit Noonia
130.	Kajal Singh	Juttan Singh
131.	Mohendra Jadab	Ramdhani Jadab
132.	Ramparikha Singh	Sukram Singh
133.	Khal Bahra Show	Chandradeo Show
134.	Sukhnandan Kurmi	Kashiram Kurmi
135.	Kamala Debi	Hari Bhuiya
136.	Kalu Singh	Jagmohan Singh
137.	Jagdish Roy	Siwsankar Roy
138.	Sripati Saw	Baldeo Saw
139.	Budhan Routh	Phagalu Routh
140.	Balchan Bhuiya	Duwarik Bhuiya
141.	Mungia Kamin	Narkhit Bhuiya
142	Paresh Das	Avilas Das
143.	Tasim Ansari	Ramjan Mia.
144.	Ramrup Singh	Ramdayal Singh
145.	Baldeo Singh	Raghu Singh
146.	Ramdeo Bhuiya	Jangli Bhuiya
147.	Gojadhar Bhuiya	Sukar Bhuiya
148.	Lalu Bhuiya	Kashi Bhuiya
149.	Baleswar Jadab	Rapan Jadab
150.	Lalan Saw	Bhagwan Saw
151.	Ramchandra Saw	Madho Saw
152.	Ambika Singh	Khelari Singh
153.	Joginder Tanti	Samar Tanti
154.	Asgar Ali	
155.	Kesia Kamin	Ganoari Bhuiya
156.	Sco Charan Ram	Anant Ram

2. Instant dispute for stopping from work 156 Wagon Loader as mentioned in the annexure to the schedule from 31-1-1976 by the management of Dalurband Colliery Sub-Area of M/s. Eastern Coalfields Limited (in short the management) was raised by the Khan Shramik Congress, Burdwan (in short the union).

3. Union's case, in short, is that the concerned workman who are 156 in number, are the bonafide employees of Dalurband Colliery and were working there as Truck/Wagon Loaders. The management having stopped the work of the concerned workman from 31-1-1976 without any reason, the union rasied a complaint to the Regional Labour Commissioner(C), Asansol which directed Labour Enforcement Officer (C), Ukhra for enquiring into the matter and to submit his report. Pursuant to the said order the L.E.O (C), Ukhra enquired into some records though the management did not produced Form—IVA maintained under the Payment of Wages Mines Rules. The L.E.O (C) found that the workmen were engaged by the management and the bill was prepared in the name of one Wagon Loader. It was also found by him that these workmen were engaged by the management. Upon submission of his report, the R.L C(C), Asansol called both the parties for discussion on several dates. It is alleged that the act of the management for non-maintenance of records and stopping the working of the workmen from 31-1-76 without any reason was unfair and unjust. Such termination also amounts to victimisation. The union accordingly prayed for reinstatement of the workmen with back wages.

4. The management filed a written statement. It's case is that Dalurband Colliery along with two other collieries despatches coal by railway as well as by road. The system obtaining there is that while wagons are loaded by Wagon Loaders, trucks are loaded by the purchasers of coal by making their own arrangement. Wagons are loaded by the parmanent Wagon Loaders besides some casual Wagon Loaders who are deployed as and when necessary. The casual Wagon Loaders who are employed are dully listed. There is no system of employing unlisted casual Wagon Loaders in these colllieries. Management also alleged that none of these 156 persons, whose names appear in the schedule of reference, was ever in the employment of the management either as permanent Wagon Loader or casual Wagon Loader in any of these three collieries, including Dalurband Colliery. Management has further alleged that there was never any occasion or necessity for the Dalurband Colliery to engage unlisted casual Wagon Loaders at any point of time and the

permanent and listed causual Wagon Loaders were adequate for lifting of coals to the wagons. Management's positive case is that since the concerned 156 peresons were never in the employment of Dalurband Colliery, there was no question of stopping them from work from 31-1-1976. It is alleged that some unscrupulous persons have instigated these people to make false claim assuring them of the employment in the colliery The management has also alleged that since these concerned workmen were never its employees, their names never appeared in any register or record whatsoever even when they were checked periodically by the Industrial Relations Machinery of the Central Government. The management also challenged the competence of the union to raise the present dispute. Management accordingly prayed for dismissal of the case of the union.

5. Both sides have produced certain documents and while the union examined four witnesses, one witness only was examined on behalf of the management.

6. Mr. S.S. Chowrhury, learned Advocate appearing for the union refused to make any argument on behalf of the workmen. Mr. Arunava Ghosh, learned Advocate for the management thereupon submitted his argument in this case.

7. Mr. Ghosh, learned Advocate for the management submitted at the first instance that the sponsoring union, namely, Khan Shramik Congress has no locus standi to espouses the cause of the workmen in this case. It appears from record that the management has taken this plea specifically in the written statement that the union is not competent to espouse the cause of the workmen. One Shri Shyamlal Kahar was examined as WW-2 in this case. He claimed to be Organising Secretary of the sponosring union. He stated in this cross-examination that his union has got the register of member and the counterfoils of the subscription receipt and the resolution book, but as he had not brought them with him, he undertook to file them latter on. These documents having never been filed by the union, it remains doubtful whether the concerned workmen were members of the sponsoring union. But that, by itself, shall not be a bar for the workman to raise the dispute. The workmen have come up with a case of stoppage of their work by the management which amounts to termination of service. Under section 2A of the Industrial Disputes Act, 1947, such dispute copuld be raised by the concerned workmen. In that view of the matter, maintainability of the reference cannot be challenged.

8. Mr. Ghose, however, seriously challenged the case of the union on merits. It was submitted by him that there being never any employer-employee relationship between the management and the concerned workmen at any point of time, no question of stopping of work of these workmen can arise. Not a single piece of paper was produced on behalf of the union to show that any of these workman had ever been appointed by the management or for that matter by the erstwhile Company before nationalisation of the coal mines. Of the four witnesses examined by the union in this matter, WW-1 is R.N Dwivedi who is an Upper Division Assistant in the Office of the Regional Labour Commissioner (Central) at Asansol. He proved certain papers relating to conciliation proceeding, but these are of hardly any relevance in this matter. He admitted his ignorance about the facts of this case. WW-2, Shyamal Kahar is the Organising Secretary of the union. He admitted that the concerned workmen had no identity cards. He also stated that the workmen used to receive wages in groups from one permanent workman in whose name the bills for wages used to be prepared and to whom the wages are given by the management for distribution. He, however, admitted that he cannot recollect the name of the workman who used to distribute the wages. He also failed to recollect the name of the official of the colliery in whose presence such distribution of the wages used to be effected. He also admitted that the workman were not members of the Provident Fund Scheme In the absence of any paper to show their appointment, the evidence of this witness regarding their work in the colliery cannot be believed. WW-3 is Chandan Das one of the concerned workmen. His evidence cannot be believed because it appears from his evidence that he started work at the age of 3 years. He admitted that he did not get any identity card and he used to get his wages after putting his signature in the khata of the Sardar. This khata was never produced He also admitted that they were neither member of the Provident Fund, nor did they get any bonus. WW-4 is one P.N. Acharya the Treasurer-cum-Office Secretary of the sponsoring union. He is not a witness of the alleged work of the concerned workmen in the colliery There is, therefore, neither any oral nor documentary evidence in support of the union's case that the concerned workman were ever engaged by the management to do any work of Wagon Loader.

9. It is in this context that the evidence led by the management requires consideration. One Ram Sebak Prasad who was examined as MW-1 is the only witness of the management in this case. He is a Loading Clerk of Dalurband Colliery. He also worked there in 1978 He stated that there used to be group loading of coals of Dalurband Colliery along with Pandaveswar Colliery and Kottadih Colliery It further appears from his evidence that coal used to be despatched either by rail or by road. For loading of coals in railway wagons there were permanent Wagon Loaders. Loading of trucks used to be done by the men of purchasers. He also stated that the management never engaged any casual workman as Wagon Loader. From his cross-examination it appears that he was working as Loading Clerk in Dalurband Colliery since 1965 and that the names of the permanent Wagon Loaders who used to work in the erstwhile private colliery were forwarded after taking over/nationalisation and the names of different persons were recorded as permanent Wagon Loaders. He emphatically denied the names of any of these concerned workmen were either forewarded by any of the collieries or they were ever recognised as Wagon Loaders after taking

over/nationalisation by the E.C.L.

10. So, upon analysis of the evidence adduced before this Tribunal it appears that the union has hopelessly failed to prove that any of the concerned workmen were ever appointed by the management to perform the work of the Wagon Loader, nor it has succeeded in proving that any of the concerned workmen ever worked as Wagon Loader in the colliery. That being the position, the alleged employer-employee relationship between the management and the concerned workmen has not been proved.

11 In the aforesaid view of the matter, no question of stopping the working of the concerned workmen by the management can arise. The workmen accordingly shall not be entitled to any relief.

This is my Award.

A.K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

21st May, 1999.

नई दिल्ली, 4 जून, 1999

का. आ. 1726.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-6-99 को प्राप्त हुआ था।

[सं. एल-22012/322/97-सी-II]

बी. एस. ए. एस. पी. राजू, डैस्क अधिकारी

New Delhi, the 4th June, 1999

S.O. 1726.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 1-6-99.

[No. L-22012/322/97-C-II]

V.S.A.S.P. RAJU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT

SHRI S. B. PANSE

PRESIDING OFFICER

REFERENCE NO. CGIT-2/114 of 1998

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

FOOD CORPORATION OF INDIA

AND

THEIR WORKMAN

APPEARANCES :

FOR THE EMPLOYER : Shri B. M. Masurkar Advocate.

FOR THE WORKMEN : Shri V. A. Pai Advocate

Mumbai, dated 14th May, 1999

AWARD-PART II

On 5th March, 1999 by Part-I Award, I came to the conclusion that the inquiry which was held against the workman was as per the Principles of Natural Justice, but the findings of the inquiry officer are perverse.

2. That was a case where in the workman was chargesheeted under Regulation-58 of Food Corporation of India (Staff Regulation) 1971 for committing a fraud viz : obtained service by indulging in a Act of impersonation'.

3. Now the issues that fall for my consideration and my findings thereon are as follows :—

	Issues	*Findings*
3.	Whether the action of the management of food Corpn. of India, Bombay in dismissing the workman Braham Dev Murli Upadhyay from the service is justified.	No.
4.	If not, to what relief the workman is entitled to.	As per order

REASONS

4. After Part-I Award the corporation filed a purshis (Exhibit-18) contending that they have no more evidence, documentary or oral to adduce the same. They want to argue the matter. The workman also filed a purshis (Exhibit-19) that he does not want to lead any oral evidence. It is also signed by the management.

5. I heard the advocates. Perused the record.

6. Infact I have come to the conclusion that the findings of the inquiry officer are perverse. Now before the Tribunal there is no other evidence for coming to any different conclusion, than which I have already given. There is no new material on the record by which it can be said that the charge which was levelled on the workman is proved. Obviously the punishment which is awarded to him is illegal, his dismissal is illegal. There is no record to show that the workman is gainfully employed and therefore he is not entitled to back wages. Under such circumstances, I record my findings on the issues accordingly and pass the following order :—

ORDER

The action of the management of Food Corporation of India, Bombay by dismissing the workman Shri Braham Dev Murli Upadhyay from service is not justified

The management is directed to reinstate him in service in continuity alongwith full back wages.

Dated : 14-5-99

S. B. PANSE, Presiding Officer

नई दिल्ली, 4 जून, 1999

का. आ. 1727.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-05-1999 को प्राप्त हुआ था ।

[सं. एल-22012/401/94-सी-II]

वी.एस.ए.एस.पी. राजू, डैस्क अधिकारी

New Delhi, the 4th June, 1999

S.O. 1727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 11-5-99.

[No. L-22012/401/94-C-II]

V.S.A.S.P. RAJU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

SHRI S. B. PANSE

Presiding Officer

Reference No. CGIT-2/9 of 1995

Employers in relation to the Management of Food Corporation of India,

And

Their Workmen

APPEARANCES :

For the Employer : Mr. B.M. Masurkar
Advocate.

For the Workmen : Mr. Mendes
Advocate.

AWARD PART-I

The Government of India, Ministry of Labour by its Order No L-22012/401/94-IR. C-II, dated 16-5-95, had referred to the following Industrial Dispute for adjudication.

"Whether the action of the Senior Regional Manager (Mah.) FCI Mistry Bhawan, P.B. No 11055, Churchgate, Bombay-20 and the District Manager, FCI Alto Porvarim Goa in awarding the penalty of reduction of pay from Rs. 3030 on Shri M.A. Saraf AGI (D) FCI Alto Porvorim, Goa is justified? If not to what relief the workman is entitled?"

2. The workman M.A. Saraf was Assistant Grade (D) to the Custodian of Godown to Food Corporation of India (hereinafter referred to as FCI) Courtalim, Goa between 16-2-86 to 20-3-86. He was given a chargesheet dt. 24-2-93 contending that :—

(a) During the leave period of Shri J.J. Halarnekar, Custodian from 16-2-1986 to 20-3-1986, Shri M.A. Saraf was hold the charge of the Depot during the said period, Shri Saraf had issued 2,613.000 MT of C. & D. Category wheat excess to Goa Roller Flour Mills by under weighing the stocks exorbitantly as compared to receipt weight in stage No. 6A/01(1) and 10/01 (Open) and caused loss to the Corporation of Rs. 5226/-.

(b) Thus Shri Saraf failed to maintain absolute integrity honesty and devotion to duty and acted in a manner unbecoming an employee of the Corporation.

(c) Shri Saraf has thus violated provisions of Regulations 31(a) & 32(5) & 30 of the Food Corporation of India (Staff) Regulations, 1971.

3. The inquiry officer submitted his report finding that the charges are proved. The disciplinary authority accepted it. It awarded the penalty by order dated 31-4-94 by which his scale was reduced to a lower grade by two stages and it was for a period of three years. With further direction that he will not earn increments of pay during the priod of reduction and on expiry of the said period that reduction will have the effect of postponing few increments of pay. It was also directed that the amount of Rs. 5226/- was to be recovered from workman's salary in 12 equal instalments.

4. The Association pleaded that the defects in the present dispute were regularised by District Manager (Goa) during the month of May, 1986 and he issued five point certificate. It is observed that there is no fraud or negligence on the part of any officials and no departmental action is necessary. Now after 7 years the management had decided to take action which is an after thought and to cover up the lapses of the person who is nearer to them. It is averred that looking to the factual position there was no question of

excess delivery to the flour mills as alleged. It is submitted that average weight formula which is relied upon cannot become a base for establishing the charges. It is pleaded that the base which it taken by the management for putting the charge and proving the same is not correct

5 The Association prayed that under such circumstances the penalty levied on the workman may be set aside.

6. The management resisted the claim by the written statement (Exhibit-5). It is pleaded that the workman denied the charges. Mr. Kurlekar the Director was appointed as the inquiry officer. He conducted the inquiry as per the Principles of Natural Justice. He came to the conclusion that the charges are proved which were accepted by the Disciplinary authority and had awarded the penalty.

7. The appeal filed by the workman was duly considered by the Appellate authority It gave personal hearing to the workman and rejected the same on 4-9-94. He preferred a review petition. It is still pending. It is averred that the inquiry was as per the Principles of Natural Justice and the findings of the inquiry officer are proper. It is pleaded that if the Tribunal comes to the conclusion that the inquiry is against the Principles of Natural Justice and the findings are perverse then the management may be given an opportunity to justify its action. It is submitted that for all these reasons the workman is not entitled to any of the reliefs.

8 The issues are framed at Exhibit-9. Issues Nos. 1, 2 & 2A are treated as preliminary issues. The issues and my findings thereon are as follows :—

	Issues	Findings
1.	Whether the domestic inquiry which was held against the workman Shri M.A. Saraf was against the Principles of Natural Justice?	No.
2.	Whether the inquiry officer adopted wrong modes to prove the charges against the workman?	No.
2A.	Whether the findings of the enquiry officer are perverse?	No.

REASONS

9. To bolster up the case the association examined M.A. Saraf the workman and one Salunke, Secretary of the Association and relied upon the documents which are produced by the management alongwith (Ex-6). The management lead oral evidence of M.M.Ganeshan Deputy Manager Vigilance.

10. It is the case of the association that the chargesheet is issued after lapse of seven years of happening of the incident. It is therefore against the Principles of Natural Justice. District Manager, Goa by his letter dated 30-5-89 informed Regional Manager, F.C.I. Mumbai regarding shortage of loss of 1 85% for January' 86 in respect of Courtalim depot. The committee investigated the matter It came to the conclusion that the losses are not justified It is therefore, the chargesheet was issued to Mr. Halnarnekar. A.G.I. (D) under whom the workman was working. It was on 14-12-90. The inquiry report came on 27-4-92 wherein he was found guility. The penalty of recovery of the amount of Rs 34,978/- was awarded to him.

11. During the examination of the report it was revealed by the Senior Manager that the workman is responsible for certain losses in the leave period of Halnarnekar. On 13-5-92 he directed to take action against the workman. Thereafter on 24-2-93 a chargesheet as stated above (Exhibit-6/1) was issued to the workman. The domestic inquiry was conducted as the workman denied the charges. These events clearly demonstrate that there is no delay or laches for conducting the inquiry against the workman.

12. The workman has challenged the capacity of the inquiry officer to conduct the inquiry. Ganeshan affirmed that the inquiry officer was retired Class-I officer having nearly thirty years of service in the Government/F.C.I. with adequate knowledge of various operations of the depots. After going through the inquiry report it also revealed that the inquiry officer is illiterate and is aware of different functions of the F.C.I. and had given due weightage to submissions made by him.

13. From perusal of the inquiry proceedings it reveals that the documents on which the management relied were produced and its inspection was taken by the workman. The truck chits, the weighment sheets, the stack registers were produced on the record. So far as the report of handing over and taking over is concerned its copy is always with the concerned person, here is this case with the workman. I therefore find that there is no substance in the contention of the workman that he did not receive the documents. After perusal of the detailed cross-examination of the management witnessess and the leading evidence of three defence witnessess it clearly goes to show that sufficient opportunity was given to the workman.

14. The management had produced the inquiry proceedings alongwith Exhibit-6. It reveals that the defence representative was given full opportunity to cross-examine the management witnesses and examine the witness on their behalf. Both the parties filed their submissions. All these clearly go to show that the inquiry which was conducted against the workman was as per the Principles of Natural Justice.

15. Now it is to be seen whether the findings of the inquiry officer are perverse and not based on the evidence before him. In other words it is to be seen whether he adopted wrong modes to prove the charges. The managment examined J.J. Harlarnekar (MW-1) under whom the workman was working. It also examined Shaikh Ibrahim (MW-2) who was one of the committee member who reported that the loss of

the particular period was in excess.He stuck up to his report. On the other hand the workman examined S.P. Sawande (DW-1), P.P. Sawant (DW-2) and G.S Salunke (DW-3) to support the case that he is innocent.

16. The inquiry officer had given his report which is at Exhibit-6/7 dated 31-8-93. His report is very detail. The report is under different headings. Heading No. 2 deals with Analysis of the evidence and findings of the inquiry officer. After going through this part of the report I do not find any perversity in the same. There is critical analysis of the oral and documentary evidence. The conclusions are logical. He had discussed each and every point of the arguments raised by the defence representative before him

17. The evidence before the enquiry officer shows that the workman was in charge of the depot in the leave period of Harlarnekar between 16-2-86 to 20-3-86. He issued it to Goa Roller Flour Mills from stack No 10/01 (open) and stack No. 6/A/01(G). Harlarnekar's testimony and the documents produced before the inquiry officer reveals that in respect of stack No 10/01 was built by workman on two days i.e. 12-3-86 and 13-3-86 having a total quantity of 1366 bags weighing 131.578 tonnes. It shows average weight of 96.323 kgs per bag at the time of receipt. Out of these bagas 338 bags with the weight show is 31.195 m. tonnes having average weight of 9 292 kgs were issued to the folour mill on 13-3-96. Similarly on 14-3-86 from the same stack again 398 bags with a weight shown as 38.073 tonnes were issued. It has an average weight of 95 660 kgs per bag.

18 From the testimony of Harlarnekar and the documents on the record it reveals that in respect of stack No 6A/01(2) stocks were received on 6-1-86 and 11-1-86. The opening balance in these stacks were 1330 bags wherein 128 674 tonnes having average weight of 96.747 kgs per bag on 6-3-86 Out of these stacks 101 bags with a weight shown as 9.315 tonnes were issued having average weight of 92.227 kgs per bag. Similarly on 11-3-86 46 bags were issued having weight as 3 920 m tonnes having average weight of 85.217 kgs per bag at the time of issue. It reveals from the documents and that while issuing the weight to the flour mills underweighing was shown by the worker to the extent of 1 626 m. tonnes from stack 10/01 & 0 987 m. tonnes from stack No. 6A/01 (G). That in all 2.613 m. tonnes. It caused loss to the management.

19 From the testimony of defence witness nothing could be proved to show that the charges are not proved. The workman in his own handwriting had written the registers specifying the quantities and weights in respect of issuance of the flour mill. The inquiry officer had given analysis of these figures in tabular form and had shown that by clear arithmatic calculation under weightment is proved which I accept.

20. The workman in his written argument had placed reliance on paragraph-22 & 23 of the inquiry report. After going through these paragraphs it reveals that the observations made by the inquiry officer are with a view to suggest the disciplinary authority that while considering the quantum of punishment all these facts which are mentioned in those paragraphs may be considered. It cannot be said that at no point of time the inquiry officer wanted to suggest the charges are not proved. On the other hand the management relied on the observations made by the inquiry officer in paragraph-20 of his report. He in categorical term mentioned that the charges which are levelled against the workmen are proved.

21. In the statement of claim the workman had taken the contention that the District Manager Goa Food Corporation of India had issued a five-point certificate in the month of 1986 contending that no fraud or negligence on any of the officials requiring departmental action. While cross-examining the witness Saraf and Salunke admits the position that they are not having the documents to show that such a certificate was issued. On the other hand Ganeshan the witness for the management in categorical terms stated that no such certificate was issued.

22. For all these reasons I find that the findings given by the inquiry officer are based on the basis of the evidence before him and he had not adopted by wrong modes to prove the charges In the result I record my findings on the issues accordingly and pass the following order :—

ORDER

The domestic inquiry which was held against the workman was as per the Principles of Natural Justice.

The findings of the inquiry officer are not perverse.

16-4-99

S B. PANSE, Presiding Officer

नई दिल्ली, 8 जून, 1999

का.आ. 1728.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोक हित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (द) के उपखंड (VI) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 2749 दिनांक 14 दिसम्बर, 1998 द्वारा ताम्बा खनन उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 5 जनवरी, 1999 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अत: अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (द) के उपखंड (VI) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के

प्रयोजनों के लिए 5 जुलाई, 1999 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा.सं. एस.-11017/11/97-आई.आर.(पी.एल.)]

एच.सी. गुप्ता, अवर सचिव

New Delhi, 8th June, 1999

S.O. 1728.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 2749 dated 14th December, 1998 the Copper Mining Industry to be a public utility service for the purpose of the said Act, for a period of six months from the 5th January, 1999.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the provio to sub-clause (vi) of clause (n) of section 2 of the Industrial Dispute Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six monts from the 5th July, 1999

[F.No. S-11017/11/97-IR (PL)]

H.C. GUPTA, Under Secy.

Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054